

**DATCP Docket No. 00-R-14**  
**Rules Clearinghouse No. 04-140**

**ORDER OF THE WISCONSIN DEPARTMENT OF AGRICULTURE, TRADE  
AND CONSUMER PROTECTION  
REPEALING AND RECREATING RULES**

- 1 The Wisconsin department of agriculture, trade and consumer protection adopts the  
2 following order to repeal and recreate ch. ATCP 40, relating to the manufacture and  
3 distribution of fertilizer and soil or plant additives.

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**Analysis Prepared by the Department of Agriculture,  
Trade and Consumer Protection**

The Department of Agriculture, Trade and Consumer Protection (“DATCP”) regulates the manufacture and sale of *fertilizer* and *soil or plant additives*, as required by ss. 94.64 and 94.65, Stats. DATCP regulates to protect farmers, consumers and honest competitors against unfair and deceptive sales practices. Regulation is designed to prevent fraudulent sales of worthless products, deceptive ingredient and performance claims, and latent safety hazards.

Under current law, companies must be licensed to manufacture or distribute fertilizer and soil or plant additives in this state. License holders file annual tonnage reports and pay tonnage fees. Product-specific permits are required for low-nutrient mixed fertilizers, and for soil or plant additives. Permit applicants must submit product labels, and must be able to justify label claims.

This rule repeals and recreates DATCP’s current rules related to the manufacture and distribution of fertilizer and soil or plant additives. This rule clarifies standards and procedures related to all of the following:

- Licensing manufacturers and distributors.
- License and tonnage fees (this rule does not increase fees).
- Product labeling and ingredient guarantees.
- Permits for low-nutrient mixed fertilizers and soil or plant additives.
- Substantiation of performance claims.
- Product sampling and analysis.
- Toxic contaminants.
- Enforcement and appeals.

This rule does not regulate the *application* of fertilizer or soil or plant additives. This rule exempts, from regulation, a farmer who sells manure produced on his or her farm. This rule also exempts federally qualified “organic” products from permit requirements (and from certain labeling and substantiation requirements) under this rule.

DATCP developed this rule in consultation with an advisory committee including agricultural producers, product manufacturers and distributors, “organic” industry representatives, and University of Wisconsin experts.

### ***Statutory Authority***

Statutory authority: ss. 93.07(1), 94.64(1)(p), (3m)(a)1. and (9), 94.65(1)(a)2. and (f), (5)(g) and (9), and 100.37(2) and 100.42(2), Stats.

Statutes interpreted: ss. 93.06(7) and (8), 94.64, 94.65, 100.37 and 100.42, Stats.

DATCP regulates the manufacture and sale of *fertilizer* under s. 94.64, Stats. A *fertilizer* is a substance that contains one or more recognized plant nutrients, is used for its plant nutrient content, and is designed for use or claimed to have value in promoting plant growth. The fertilizer law does not apply to “unmanipulated” manure (as defined in this rule), liming materials or other exempt products. Under the fertilizer law:

- DATCP licenses fertilizer manufacturers and distributors, regulates fertilizer labeling and sales practices, issues permits for low-nutrient mixed fertilizers, regulates deceptive labeling claims, and tests products for compliance with ingredient guarantees.
- DATCP collects license, permit and tonnage fees, and allocates fee revenues (according to a statutory formula) for program administration, environmental cleanup and research.
- DATCP may deny, suspend or revoke licenses or permits, impose license or permit conditions, issue holding orders to prevent the sale of adulterated or misbranded fertilizer, and pursue court action against law violators.
- DATCP may adopt rules, under ss. 94.64(1)(p), (3m)(a)1. and (9), Stats., related to this regulatory program. DATCP also has general rulemaking authority under s. 93.07(1), Stats.

DATCP regulates the manufacture and sale of *soil or plant additives* under s. 94.65, Stats. A *soil or plant additive* is a substance (other than a fertilizer) which is intended for application to seeds, soil or plants, and which is designed for use or claimed to have value in promoting or sustaining plant growth, improving crop yield or quality, promoting or sustaining the fertility of soil, or favorably modifying the structure, physical or biological properties of the soil for agronomic or horticultural purposes.

The soil or plant additive law does not apply to “unmanipulated” manure (as defined in this rule), fertilizer, registered pesticides, liming materials or other exempt products. Under the soil or plant additive law:

- DATCP licenses product manufacturers and distributors, regulates product labeling and sales practices, issues permits for individual products, regulates deceptive labeling claims, and tests products for compliance with ingredient guarantees.
- DATCP collects license, permit and tonnage fees, and allocates fees (according to a statutory formula) for program administration, environmental cleanup and research.
- DATCP may deny, suspend or revoke licenses or permits, impose license or permit conditions, issue holding orders to prevent the sale of adulterated or misbranded products, and pursue court action against law violators.
- DATCP may adopt rules, under ss. 94.65(1)(a)2. and (f), (5)(g) and (9), Stats., to implement this regulatory program. DATCP also has general rulemaking authority under s. 93.07(1), Stats.

DATCP also regulates hazardous substances and consumer product safety under ss. 100.37 and 100.42, Stats. Under these statutes, DATCP may regulate products (including fertilizers or soil or plant additives) that may pose latent safety hazards under foreseeable use conditions.

### ***Rule Contents***

#### **License to Manufacture or Distribute**

Under current law, a person must have an annual license to manufacture or distribute fertilizers, and a separate license to manufacture or distribute soil or plant additives. This rule clarifies current licensing requirements and procedures.

This rule exempts certain persons from licensing. For example, this rule exempts a farmer who sells or distributes manure for application to land covered by a nutrient management plan, regardless of whether the manure is “manipulated.” This rule also exempts persons who merely sell ingredients to licensed manufacturers, or distribute the packaged and labeled products of license holders.

A person must apply for a license on a form provided by DATCP. The person must include the required license information and fees, and must identify any low-nutrient mixed fertilizers or soil or plant additives for which product-specific permits are required (see below).

DATCP must normally grant or deny a license application within 45 working days after DATCP receives a complete license application. If DATCP denies a license application, or issues a conditional license, it must give its reasons.

License holders are currently required to pay annual license fees (based on number of business locations). License holders must also file confidential annual tonnage reports with DATCP, and pay tonnage fees based on product tonnage distributed in this state. Fee revenues are allocated according to a statutory formula for program administration, environmental cleanup and research. *This rule does not change current license or tonnage fees, or the allocation of fee revenues.*

### **Product-Specific Permits**

Under current law, a license holder must have a product-specific permit to distribute a low-nutrient mixed fertilizer (in which the sum of the guarantees for primary plant nutrients is less than 24%) or a soil or plant additive. This rule exempts, from these permit requirements, an “organic” product that complies with federal rules and is properly labeled for organic crop production only (see below).

An application for a product-specific permit must include all of the following:

- Proposed product labeling. The product label must include recommended uses and use directions to ensure effectiveness.
- A fee of \$25 for a fertilizer and \$100 for a soil or plant additive (*this rule does not change current fees*).

The applicant must certify all of the following in the application:

- The product is effective and useful for labeled purposes when applied under Wisconsin conditions according to label directions.
- The applicant has reliable information to substantiate product labeling, including content guarantees. The applicant must specify a laboratory method for testing the amount of each active ingredient guaranteed on the product label.
- The applicant has relevant scientific evidence to substantiate product performance claims.

The applicant is not required to submit substantiating information unless DATCP requests that information. DATCP may review a permit application to the extent that it deems appropriate. DATCP may review:

- Product labeling.

- Product efficacy, under Wisconsin conditions, when the product is used according to label directions.
- Product content and performance claims. DATCP may determine whether claims are truthful and properly substantiated. DATCP may also review laboratory methods used to determine product contents.
- Possible health, safety and environmental hazards (and hazard labeling).

DATCP has 30 working days to determine whether an application is complete. If an application is incomplete, DATCP must tell the applicant what is needed to complete the application. If the applicant fails to complete the application within 30 days, DATCP may deny the application.

DATCP must grant or deny an application within 60 working days after the applicant submits a complete application, unless DATCP reasonably finds that a supplementary review is necessary (for example, DATCP might request substantiation of performance claims that appear to be false or exaggerated). DATCP must identify the scope of any supplementary review, the reasons for the supplementary review, and any additional information requested of the applicant. DATCP must complete the supplementary review as soon as reasonably possible, but not more than 120 days after DATCP receives the requested information.

When the supplementary review is complete, DATCP must grant or deny the permit. DATCP may impose conditions on a permit as necessary (for example, DATCP may require the applicant to change false label claims).

DATCP currently processes 350 to 400 permits each year. In some cases, where there are serious concerns related to product efficacy or label claims, DATCP consults with university experts and evaluates available scientific evidence.

### **Fertilizer Labeling**

This rule clarifies current fertilizer labeling requirements. Under this rule, all packaged fertilizer must be clearly and conspicuously labeled with the following information:

- The name and address of the licensed manufacturer or distributor.
- The fertilizer product name.
- The fertilizer “grade.” This is a shorthand statement of primary plant nutrient contents. Primary plant nutrients are nitrogen (N), available phosphate ( $P_2O_5$ ) and soluble potash ( $K_2O$ ), commonly designated as N-P-K.

- A “guaranteed analysis” of primary nutrients, secondary nutrients, micro-nutrients and enhancing elements, if any. The guaranteed analysis must be presented in a standard format. Guarantees must be expressed as minimum percentages by weight of the fertilizer. Supplementary information is required in some cases.
- The net weight of the fertilizer contained in the package.
- Any statements or disclaimers required by this rule.

A manufacturer or distributor of bulk (unpackaged) fertilizer must provide similar information related to each bulk fertilizer delivery, on a written label statement that accompanies the delivery. The label statement must also indicate the delivery date, the name and address of the recipient, and the weight of the delivery.

A manufacturer who “custom-mixes” bulk fertilizer according to the purchaser’s specifications may provide the purchaser with a written statement listing the weight and grade of each *ingredient*, rather than the grade and guarantee of the finished product, unless the purchaser contracts for a specified grade of finished product.

Under current rules, a person who sells bulk agricultural fertilizer to a landowner must record (and keep for 2 years) the name and address of the nutrient management planner who prepared the landowner’s nutrient management plan (if any). This rule does not change that requirement.

### **Soil or Plant Additive Labeling**

This rule clarifies current labeling requirements for soil or plant additives. Soil or plant additives must be clearly and conspicuously labeled with the following information:

- The name and address of the licensed manufacturer or distributor.
- The product name.
- The net weight or liquid measure of the package or bulk delivery.
- The purposes for which the soil or plant additive is recommended.
- Complete use directions to ensure that the product is effective and useful under Wisconsin conditions. The use directions must include the recommended application sites, methods, rates and frequencies. If effectiveness depends on use with other products or practices, that must be disclosed.
- A “guaranteed analysis.”
- Supplementary disclosures, if applicable.

The “guaranteed analysis” must list all active and inert ingredients in a standard format. The amount of each active ingredient must be guaranteed as a percentage by weight of the soil or plant additive, unless the active ingredient is a microorganism. If microorganisms are claimed as active ingredients, the label must identify the type of microorganism and must guarantee the number of viable microorganisms (or colony forming units) per milliliter of liquid product or per gram of non-liquid product.

An “organic” product need *not* be labeled with recommended uses or use directions, provided the product complies with federal rules and is designed and labeled solely for organic crop production (see below). Product labeling must comply with other requirements under this rule. A manufacturer or distributor may not make any untrue, deceptive or misleading claims for the product.

### **Implied Warranty**

A person who distributes a low-nutrient mixed fertilizer or soil or plant additive implicitly warrants that the product is effective for all of the purposes recommended in the product labeling, when applied under Wisconsin conditions according to label directions. This warranty does not apply to federally qualified “organic” products that are designed and labeled solely for organic crop production (see below).

### **Combination Products; Labeling**

Combination products (fertilizers or soil or plant additives combined with each other, or with pesticides, seed or liming materials) must be labeled according to this rule and other applicable regulations. For example, fertilizer-pesticide combinations (such as “weed and feed” products) must be labeled according to this rule and applicable pesticide rules.

### **Substantiating Label Claims**

Manufacturers and distributors of fertilizers or soil or plant additives must have:

- Relevant and reliable information to substantiate product labeling, including product content claims.
- Relevant scientific evidence to substantiate performance claims made for low-nutrient mixed fertilizers or soil or plant additives. The evidence must substantiate the performance claims under Wisconsin conditions, when the product is applied according to label directions.

Manufacturers and distributors must have substantiation for label claims *before* they make those claims. DATCP *may* require a manufacturer or labeler to submit substantiating information. This rule spells out standards for scientific substantiation of performance claims (for example, mere “testimonials” do not qualify).

## **“Organic” Products**

This rule exempts federally qualified “organic” products from permit requirements and certain labeling requirements under this rule (see above) if all of the following apply:

- The product complies with federal rules related to products used for organic crop production (and the product label so states).
- The product label states that “This product is intended for use according to an approved organic system plan.”
- The manufacturer or distributor makes no performance claims for the product.

Although federally qualified “organic” products are exempt from some requirements under this rule, they must comply with other requirements. Sellers must be licensed by DATCP, and must label product contents according to this rule. A seller may not make false, deceptive or misleading claims.

## **Product Sampling and Testing**

DATCP may collect and test product samples to determine compliance with content guarantees. For these “official tests,” DATCP will use sampling and test methods prescribed in this rule.

## **Content Deficiencies**

A fertilizer is mislabeled if an “official test” shows any of the following:

- The fertilizer contains less than 90% of the label guarantee for any primary nutrient.
- The actual percentage amount of any primary nutrient falls at least 2 percentage points short of the percentage amount stated on the label.
- The economic value of primary nutrients actually present is less than 98% of the “economic value” of the amounts guaranteed (“economic value” is calculated according to this rule).
- The amount of any secondary nutrient, micronutrient or enhancing element falls short of the label guarantee by an amount specified in this rule.

A soil or plant additive is mislabeled if an “official test” shows that it contains less than 98% of the amount of any active ingredient guaranteed on the label.



## **Toxic Substances**

No product may contain any of the following:

- Toxic concentrations of metals (toxic concentrations are specified in this rule).
- A substance that is toxic or injurious to plants, animals or humans when the fertilizer or soil or plant additive is handled or applied under reasonably foreseeable use conditions, unless the substance and its hazards are identified on the product label.

## **Special Provisions**

This rule includes specific regulations or disclosure requirements related to:

- Fertilizer labeled for foliar application.
- Phosphite.

## **Prohibitions**

Under this rule:

- No person may misrepresent or falsify any license or permit application, or any other information filed with DATCP under this rule.
- No person may do any of the following in connection with the labeling, promotion or distribution of any fertilizer or soil or plant additive:
  - Make any statement that is false, deceptive or misleading.
  - Make any statement that is inconsistent with the product label.
  - Represent that a product contains a plant nutrient or other substance, unless the “guaranteed analysis” includes a guarantee for that substance.
  - Make any statement or warranty that is not substantiated, to the extent required under this chapter, at the time the statement or warranty is made.
  - State or imply that DATCP endorses or warrants the product.
  - Make any performance claim, for a product distributed under permit, that is contrary to the product label contained in the approved permit application.

## **Enforcement**

DATCP may take the following actions against rule violators, as appropriate (per current law):

- Deny, suspend, revoke, or impose conditions on a license or permit (the affected manufacturer or distributor may demand a formal administrative hearing).

- Issue holding orders to prevent the sale or movement of illegal products.
- Seek prosecution in court (seizure actions, injunctions, restitution, civil forfeitures or criminal penalties).

### ***Standards Incorporated by Reference***

Pursuant to s. 227.21, Stats., DATCP has requested permission from the attorney general and the revisor of statutes to incorporate the following standards by reference in this rule:

- Fertilizer terms defined in the Official Publication of the Association of American Plant Food Control Officials, No. 57 (2004).
- Fertilizer sample collection methods specified in the Inspectors Manual of the Association of American Plant Food Control Officials, 6<sup>th</sup> edition (1999).
- Fertilizer test methods specified in the “Official Methods of Analysis of AOAC International,” volume I, 17<sup>th</sup> edition as updated by the 2<sup>nd</sup> revision (2003).
- Statement of uniform interpretation and policy 25, related to heavy metal concentrations in fertilizer, contained in the Official Publication of the Association of American Plant Food Control Officials, No 57 (2004).
- Standard chemical names listed in the Merck Index, 12<sup>th</sup> edition (1996).

Copies of the standards will be kept on file with DATCP, the secretary of state and the revisor of statutes. Copies may be obtained from the publishing organizations.

### ***Fiscal Impact***

This rule will have no fiscal impact on DATCP or local units of government. This rule will clarify current regulations, and improve program administration. DATCP does not anticipate any additional costs or staffing needs. A complete fiscal estimate is attached.

### ***Business Impact***

This rule will protect farmers, consumers and honest competitors against unfair and deceptive sales practices. This rule is designed to prevent fraudulent sales of worthless or hazardous products. It is also designed to prevent deceptive labeling claims that may mislead purchasers or give sellers an unfair competitive advantage.

There are approximately 540 persons licensed to manufacture or distribute fertilizers or soil or plant additives in Wisconsin. Up to 30% of these license holders may be small businesses. Affected businesses include farm centers and cooperatives, lawncare businesses, and manufacturers of nonagricultural and specialty fertilizers.

This rule will have few, if any, adverse impacts on business. This rule will not increase fees and, for most honest businesses, will not increase costs. For the most part, this rule merely clarifies current requirements and procedures. However, this rule may require some businesses to modify their labels, or be more diligent in substantiating label claims.

The fertilizer industry serves about 30,000 Wisconsin farmers, many of whom are small businesses. This rule will benefit farmers, by preventing unfair and deceptive sales practices. This rule will facilitate farmer-to-farmer sales of manure, by expanding the current exemption for “unmanipulated” manure and creating an exemption for “manipulated” manure sold for application under a nutrient management plan.

This rule makes special allowance for sellers of federally qualified “organic” fertilizers and soil or plant additives. Federally qualified “organic” products are exempt from permit requirements, and from certain labeling requirements, if they are designed and labeled solely for use in organic crop production (basic licensing and labeling requirements will still apply). Sellers may not make false, deceptive or misleading claims for “organic” products.

Because this rule will not have a significant adverse impact on small business, it is not subject to the delayed small business effective date provision in s. 227.22(2)(e), Stats. A small business analysis (“final regulatory flexibility analysis”) is attached.

Under 2003 Wis. Act 145, DATCP and other agencies must adopt rules spelling out their rule enforcement policy for small businesses. DATCP has not incorporated a small business enforcement policy in this rule, but will propose a separate rule on that subject. DATCP will, to the maximum extent feasible, seek voluntary compliance with this rule.

### ***Environmental Impact***

This rule will have no adverse environmental impact. This rule will clarify the licensing, permitting and labeling requirements for fertilizer and soil or plant additive products. This rule will help prevent environmental and safety hazards associated with some products. A complete environmental assessment is attached.

### ***Federal Regulation***

There is no significant federal regulation of fertilizers or soil or plant additives, although there is a long history of regulation by states (see below).

The United States department of agriculture (USDA) has established rules for “organic” crop production. USDA rules set standards for fertilizers and soil or plant additives used in “organic” crop production. USDA also accredits private organizations that may approve “organic” products. This rule exempts federally qualified “organic” products from permit requirements and certain labeling requirements under this rule (see above).

## ***Surrounding State Regulation***

### **General**

States have historically regulated fertilizer and soil or plant additives to prevent fraudulent sales of worthless products, and to protect farmers, consumers and honest competitors against unfair and deceptive practices.

State fertilizer regulators have organized a national Association of American Plant Food Control Officials (AAPFCO). AAPFCO promotes uniform state laws related to fertilizers, soil or plant additives (also known as soil amendments), and liming materials used to correct soil acidity. Most states, including Wisconsin and surrounding states, follow AAPFCO principles and have similar basic laws. However, there is some variation in laws from state to state.

Fertilizer laws tend to be more standardized than soil or plant additive laws. Wisconsin's soil or plant additive law is similar to laws in Minnesota and Iowa. Illinois has little regulation of soil or plant additives. Michigan's law is similar to those in Wisconsin, Minnesota and Iowa, but is narrower in scope (it exempts various biological and hormone products).

### **Basic Fertilizer Regulation**

Wisconsin and adjoining states have similar basic fertilizer laws, based on AAPFCO models. Wisconsin and adjoining states require similar labeling, and use similar terms and definitions (typically drawn from AAPFCO). There are minor variations between states.

### **Manure Sales**

Fertilizer laws vary in their treatment of manure. All states exempt “unmanipulated” manure from the definition of *fertilizer*, but there is uncertainty related to the definition of “unmanipulated” manure and the treatment of bulk manure sales (including, for example, sales of farm-dried or farm-composted manure). Iowa licenses distributors of “bulk dry animal nutrient products” and has mechanisms to make purchasers aware of nutrient contents. Minnesota licenses commercial animal waste technicians and, effective in 2005, will certify private manure applicators. Illinois and Michigan do not address the issue.

This rule clarifies that manure is “unmanipulated” (and thus exempt from rule coverage) if it is modified solely for purposes of on-farm storage, handling, animal husbandry or odor control, rather than commercial sales. This rule *also* exempts “manipulated” manure sold or distributed for use on land covered by a nutrient management plan (this exemption is not available in other states).

## **Nutrient Content**

Wisconsin and all adjoining states, except Minnesota, require minimum percentage guarantees for primary plant nutrients (N-P-K) in mixed fertilizers sold for general agricultural use. The minimum percentage is 24% in Wisconsin, 20% in Illinois and Michigan, and 21% in Iowa (most mixed fertilizers actually have much higher guarantees).

Wisconsin allows sales of low-nutrient mixed fertilizers (below 24%) for specialized agricultural use or nonagricultural use, but only with a permit. Illinois, Michigan and Iowa allow sales only for nonagricultural use (Iowa also allows foliar fertilizers and composts for organic crop production).

The adjoining states require *annual* permits for nonagricultural fertilizer products (Iowa requires a one-time permit). Wisconsin requires one-time (not annual) permits, and only for low-nutrient products. This rule exempts federally listed “organic” products from the Wisconsin permit requirement. Wisconsin and Iowa spell out procedures for granting and suspending permits (other states are less clear).

## **Tonnage Reports and Fees**

Wisconsin and adjoining states require fertilizer tonnage reports and tonnage fees. Wisconsin requires once-per-year reporting, whereas adjoining states require monthly (IL) or semi-annual (MN, IA, MI) reporting. Wisconsin tonnage fees are higher than surrounding states. Wisconsin is somewhat unique in using tonnage fees to fund environmental cleanup and research, as well as program administration. This rule does not change current tonnage fees.

## **Use Directions**

This rule requires use directions on low-nutrient mixed fertilizers (not other fertilizers) and on soil or plant additives. The AAPFCO model requires use directions for *all* packaged fertilizers, and Minnesota requires use directions on all nonagricultural fertilizers. Other states do not require use directions, but prohibit agricultural sales of low-nutrient mixed fertilizers (with limited exceptions in Iowa). Minnesota, Iowa and Michigan, like Wisconsin, regulate soil or plant additives to ensure efficacy, and some states require use directions.

## **Nutrient Guarantees**

Wisconsin’s label format for fertilizer guarantees is consistent with surrounding states. All states use the AAPFCO model format, and identify the elements or compounds that qualify as recognized plant nutrients.

## **Labeling Combination Products**

This rule clarifies the labeling of products that combine fertilizer and soil or plant additive materials. Although DATCP frequently encounters products of this type, neither AAPFCO nor any adjoining state provides any labeling guidance.

## **Hazard or Caution Statements**

This rule requires hazard or caution statements for certain fertilizers that may be toxic to plants or animals, consistent with the current AAPFCO model rule. Iowa, Illinois and Minnesota follow an earlier draft of the AAPFCO model rule, which specifies precautionary statements for boron or molybdenum.

This rule also prohibits excessive concentrations of heavy metals, consistent with an AAPFCO policy statement. Other states do not specifically address this toxicity concern, except to a very limited extent.

## **Sample Collection and Analysis**

Wisconsin and all adjoining states collect and analyze samples to check for compliance with label guarantees. AAPFCO establishes standard sampling methods and product tolerances that take account of manufacturing variability. This rule follows the AAPFCO model, but allows greater tolerances for individual nutrient guarantees. Other states vary in their approach.

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1           **SECTION 1.** Chapter ATCP 40 is repealed and recreated to read:

2   **CHAPTER ATCP 40**

3   **FERTILIZER AND RELATED PRODUCTS**

4   **SUBCHAPTER I**  
5   **GENERAL PROVISIONS**

6           **ATCP 40.01 Purpose.** This chapter has the following purposes:

7                   **(1)** To protect Wisconsin consumers, including farmers and household users,  
8 against unfair and deceptive practices in the sale of fertilizers or soil or plant additives.

9                   **(2)** To protect honest businesses against unfair and deceptive methods of  
10 competition.

1           **(3)** To prevent certain hazards to persons, property and the environment.

2           **NOTE:** See s. 94.64, Stats. (fertilizer), s. 94.65, Stats. (soil or plant additives),  
3                       s. 100.18, Stats. (fraudulent representations), s. 100.37, Stats. (hazardous  
4                       substances), s. 100.42, Stats. (product safety) and ch. ATCP 139  
5                       (consumer product safety).  
6

7           **ATCP 40.02 Definitions.** In this chapter:

8           **(1)** “Active ingredient” means an element, chemical compound or other substance  
9           that affects the efficacy, usefulness or performance of a fertilizer or soil or plant additive.

10          “Active ingredient” includes all of the following:

11               (a) A plant nutrient.

12               (b) A living microorganism.

13               (c) Any other component declared, or required to be declared under this chapter,  
14           as an active ingredient on the product label.

15           **(2)** “Bulk fertilizer” or “bulk soil or plant additive” means a fertilizer or soil or  
16           plant additive that is distributed in unpackaged form, or in a container that holds more  
17           than 55 gallons of liquid or 100 lbs. of dry material.

18           **(3)** “Combination product” means any of the following:

19               (a) A fertilizer-additive combination.

20               (b) A fertilizer-pesticide combination.

21               (c) A pesticide-additive combination.

22               (d) A fertilizer or soil or plant additive combined with seed.

23               (e) A fertilizer or soil or plant additive combined with liming material.

24           **(4)** “Custom mixed fertilizer” means a fertilizer that a manufacturer mixes for a  
25           retail customer according to individual specifications provided by the retail customer.

1           **(5)** “Department” means Wisconsin department of agriculture, trade and  
2 consumer protection.

3           **(6)** “Distribute” means to import, consign, sell, offer for sale, solicit orders for  
4 sale, or supply for sale or use in this state. “Distribute” does not include the sale or  
5 delivery of manure represented only as manure, by the person who owns or operates the  
6 farm that produces the manure, for application on any of the following:

7           (a) Land owned or controlled by that person.

8           (b) Land covered by a nutrient management plan under s. ATP 50.04(3).

9           **(7)** “Enhancing element” means aluminum, cobalt, selenium, silicon or sodium.

10          **(8)** “Fertilizer” means any substance that contains one or more plant nutrients, is  
11 used for its plant nutrient content, and is designed for use or claimed to have value in  
12 promoting plant growth. “Fertilizer” includes agricultural and nonagricultural fertilizers,  
13 fertilizer materials, mixed fertilizers, custom mixed fertilizers, and combination products  
14 containing fertilizer. “Fertilizer” does not include unmanipulated animal or vegetable  
15 manure, marl, liming material, wood ashes, or sewage sludge other than finished sewage  
16 sludge products.

17          **(9)** “Fertilizer-additive combination” means a fertilizer combined with a soil or  
18 plant additive, or a fertilizer that is represented as having plant growth benefits beyond  
19 those attributable to the fertilizer’s plant nutrient contents. “Fertilizer-additive  
20 combination” includes a fertilizer that is represented to contain enhancing elements other  
21 than cobalt or sodium.

22          **(10)** “Fertilizer material” means a substance that meets all of the following



1 criteria:

2 (a) It is an element, a chemical compound, or a substance manufactured by  
3 chemical reaction.

4 (b) It contains one or more plant nutrients.

5 (c) It is a fertilizer component or is used to compound fertilizer.

6 **(11)** “Fertilizer-pesticide combination” means a fertilizer combined with a  
7 pesticide.

8 **NOTE:** For example, “weed and feed” products are fertilizer-pesticide  
9 combinations.  
10

11 **(12)** “Finished sewage sludge product” means a product, consisting partly or  
12 entirely of sewage sludge, that has been disinfected or treated to facilitate sale or  
13 distribution. “Finished sewage sludge product” does not include sewage sludge  
14 distributed under a pollutant discharge elimination permit issued by the department of  
15 natural resources under s. 283.31 or 283.35, Stats.

16 **(13)** “Foliar fertilizer” means a fertilizer designed or labeled for direct application  
17 to plant foliage and intended for absorption through the plant’s foliage.

18 **(14)** “Grade” means the percentage guarantees of total nitrogen (N), available  
19 phosphate ( $P_2O_5$ ) and soluble potash ( $K_2O$ ), stated in the same terms, order and  
20 percentages as in the guaranteed analysis.

21 **(15)** “Guaranteed analysis” means the guaranteed percentage content by weight of  
22 each plant nutrient, active ingredient and inert ingredient, stated according to s. ATCP  
23 40.10 or 40.26. For microbiological ingredients in a soil or plant additive, “guaranteed  
24 analysis” means the number of viable microorganisms or colony forming units per unit of

1 dry weight or per unit of liquid volume.

2           **(16)** “Inert ingredient” means a component that does not affect product efficacy  
3 or performance.

4           **(17)** “Label” means a written, printed, graphic or pictorial statement that is one of  
5 the following:

6           (a) Part of, or attached to, a package containing fertilizer or a soil or plant  
7 additive.

8           (b) Used to identify, for distribution or storage, a bulk fertilizer or a bulk soil or  
9 plant additive.

10           **(18)** “Labeling” means labels and other written, graphic or pictorial statements  
11 that accompany a fertilizer or a soil or plant additive, or that promote the sale or  
12 distribution of fertilizer or soil or plant additives. “Labeling” includes advertising and  
13 website materials that promote the sale or distribution of a fertilizer or soil or plant  
14 additive.

15           **(19)** “Landowner” has the meaning given in s. ATCP 50.01(15).

16           **(20)** “Manipulated manure” means manure that is ground, pelletized,  
17 mechanically dried, packaged, supplemented with plant nutrients or other substances, or  
18 otherwise treated in a manner designed to facilitate sale or distribution as a fertilizer or  
19 soil or plant additive. “Manipulated manure” does not include unpackaged manure that is  
20 modified solely as an incidental result of normal on-farm practices such as the following:

21           (a) Addition of bedding, sand or water for purposes of animal husbandry or barn  
22 cleaning.

1 (b) Shredding, grinding or agitating for purposes of manure handling or removal  
2 from a manure storage system.

3 (c) Drying incidental to mechanical ventilation of animal confinement areas.

4 **(21)** “Manufacture” means any of the following:

5 (a) To process, granulate, compound, formulate, produce, mix, blend, or alter the  
6 composition of a fertilizer, fertilizer material, or soil or plant additive for distribution.

7 (b) To package or label, for distribution, a fertilizer, fertilizer material, or soil or  
8 plant additive.

9 **(22)** “Micronutrient” means boron, chlorine, copper, iron, manganese,  
10 molybdenum, nickel, or zinc.

11 **(23)** “Mixed fertilizer” means a fertilizer containing any combination or mixture  
12 of fertilizer materials, or a fertilizer material and any other substance. A fertilizer  
13 material containing impurities inherent in the manufacture of that fertilizer material does  
14 not constitute a “mixed fertilizer” unless the distributor claims that the impurities are  
15 plant nutrients, fertilizer materials or soil or plant additives.

16 **(24)** “Nonagricultural fertilizer” means a fertilizer designed, labeled and  
17 distributed for non-farm use, including use for home gardens, lawns, shrubbery, flowers,  
18 golf courses, parks, cemeteries, greenhouses, nurseries, or scientific research or  
19 experimentation.

20 **(25)** “Nutrient management plan” means a plan that complies with s. ATCP  
21 50.04(3).

22 **(26)** “Packaged fertilizer” means a fertilizer that is sold in a closed package or

- 1 container. “Packaged fertilizer” includes packaged custom mixed fertilizer.
- 2           **(27)** “Packaged soil or plant additive” means a soil or plant additive that is sold in  
3 a closed package or container.
- 4           **(28)** “Percent” or “percentage” means percentage by weight.
- 5           **(29)** “Pesticide” has the meaning given in s. 94.67, Stats. “Pesticide” includes a  
6 fertilizer-pesticide combination and a pesticide-additive combination.
- 7           **(30)** “Pesticide-additive combination” means a pesticide combined with a soil or  
8 plant additive.
- 9           **(31)** “Plant nutrient” or “nutrient” means any of the following:
- 10           (a) A primary plant nutrient.
- 11           (b) A secondary plant nutrient.
- 12           (c) A micronutrient.
- 13           **(32)** “Primary plant nutrient” means nitrogen (N), available phosphate ( $P_2O_5$ ) or  
14 soluble potash ( $K_2O$ ).
- 15           **(33)** “Product” means a fertilizer or a soil or plant additive.
- 16           **(34)** “Product name” means a name, designation or trademark that identifies a  
17 product.
- 18           **(35)** “Ready-to-use liquid fertilizer” means a liquid fertilizer that is designed and  
19 labeled to be applied without prior mixing or dilution by the user.
- 20           **(36)** “Represent” means to state or imply by any means, including any oral,  
21 written, graphic or broadcast means.
- 22           **(37)** “Scientific evidence” means evidence that is logically derived from

1 controlled experiments designed, conducted and reported according to the scientific  
2 method, using relevant experimental and statistical analytical procedures that are  
3 generally recognized and defensible as valid and appropriate among peers in the relevant  
4 scientific community. Testimonials are not “scientific evidence.”

5       **(38)** “Secondary plant nutrient” means calcium, magnesium or sulfur.

6       **(39)** “Sewage” has the meaning given in s. 281.01(13), Stats.

7       **(40)** “Sewage sludge” means the solid, semi-solid or liquid residue generated  
8 during the treatment of sewage in a treatment works. Sewage sludge includes scum or  
9 solids recovered in primary, secondary or advanced wastewater treatment processes, and  
10 also includes material derived from sewage sludge. Sewage sludge does not include ash  
11 generated during the firing of a sewage sludge incinerator, or grit or screenings generated  
12 during preliminary treatment of domestic sewage in a treatment works.

13       **(41)** “Soil or plant additive” or “additive” means a substance, intended for  
14 application to seeds, soil or plants, that is designed for use or claimed to have value in  
15 promoting or sustaining plant growth, improving crop yield or quality, promoting or  
16 sustaining the fertility of soil, or favorably modifying the structural, physical or biological  
17 properties of the soil for agronomic or horticultural purposes. “Soil or plant additive”  
18 includes a combination product containing a soil or plant additive, and also includes any  
19 product represented to contain humate, humin, humic acid, fulvic acid or other humic  
20 substances. “Soil or plant additive” does not include any of the following:

21       (a) Fertilizer, other than a fertilizer-additive combination. A fertilizer is not  
22 considered a fertilizer-additive combination merely because its guaranteed analysis

- 1 includes guarantees under s. ATCP 40.10 for cobalt or sodium.
- 2 (b) Liming material that is distributed solely for the purposes stated in s.
- 3 94.66(1)(am), Stats., and is not part of a combination product.
- 4 (c) Wood ashes, unmanipulated animal manure or unmanipulated vegetable
- 5 manure. This exemption does not apply to wood ashes or manure distributed under
- 6 another name or description.
- 7 (d) A pesticide registered under 7 USC 136 or by the department, other than a
- 8 pesticide-additive combination.
- 9 (e) Mulches distributed only as soil covers or weed barriers.
- 10 (f) Perlite labeled as perlite, or vermiculite labeled as vermiculite, that is not
- 11 mixed with any other substance.
- 12 (g) Potting soil or similar mixtures of readily identifiable organic substances,
- 13 unless labeled with performance claims associated with its use as a soil amendment.
- 14 (h) Compost, peat moss, tree bark, wood shavings, and other readily identifiable
- 15 organic substances that are commonly applied to soil, provided that all the following
- 16 apply:
- 17 1. The substance is distributed under its common name. Composts must identify
- 18 the material composted, such as animal manure, yard waste or urban refuse.
- 19 2. The product labeling does not make performance claims related to plant
- 20 growth, plant health, crop yield or soil fertility.
- 21 (i) Seed, labeled according to ch. ATCP 20, that has been treated or coated with a
- 22 soil or plant additive. This exemption does not apply to any of the following:

1           1. Substances sold for later application to seed.

2           2. Substances, containing seeds or seed parts, that are sold as soil or plant  
3 additives.

4           (j) An adjuvant sold only to improve the mixing, handling or application of  
5 fertilizers or pesticides. This exemption does not apply if a distributor makes any other  
6 benefit claims for the adjuvant, other than a precautionary written statement on the  
7 product label that says the adjuvant may increase the contact effects of products applied  
8 with it.

9           (k) Sewage sludge other than a finished sewage sludge product.

10          **(42)** “Special agricultural-use fertilizer” means a fertilizer that is any of the  
11 following:

12          (a) Designed and labeled to remedy only plant nutrient deficiencies unique to  
13 certain agricultural crops or local Wisconsin agricultural areas.

14          (b) Designed and labeled solely for organic crop production.

15          **(43)** “Substantiate” means to demonstrate clearly and convincingly, with  
16 satisfactory and sufficient evidence.

17          **(44)** “Unmanipulated animal or vegetable manure” means animal or vegetable  
18 manure that is not manipulated.

19          **(45)** “Wisconsin conditions” means plant growing conditions, including  
20 conditions related to soil, climate, growing season, plant species, plant varieties and plant  
21 growing practices, that are similar or identical to those commonly found in Wisconsin.

22          **(46)** “Working days” means the days designated in s. 230.35(4), Stats.

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2. The bulk fertilizer bears the label information provided by the licensed supplier, including the supplier's name, product name, fertilizer grade and guaranteed analysis.

**(3) LICENSE APPLICATION.** A person shall apply for an annual fertilizer license on a form provided by the department. A license application shall include all of the following:

(a) The applicant's correct legal name, and any trade name under which the applicant does business.

(b) The applicant's social security number if the applicant is an individual. If the applicant is a partnership, the application shall include the social security number of each individual partner.

**NOTE:** A social security number is required under s. 93.135(1)(cm), Stats.

(c) Each address from which the applicant proposes to do business in this state.

(d) Each address and mobile unit at which the applicant proposes to manufacture fertilizer in this state. Before adding a manufacturing location or mobile manufacturing unit during a license year, a license holder shall obtain an additional license for that location or unit.

(e) The fees and surcharges required under sub. (4).

(f) A current list of fertilizer products which the applicant proposes to manufacture or distribute, and for which the applicant is required to have permits under s. ATPC 40.12. The application shall include a current label for each of those products.

**NOTE:** A license under sub. (1) does not authorize the license holder to manufacture or distribute a fertilizer product for which a permit is required under s. ATPC 40.12 unless the license holder also holds that permit.

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(g) Other relevant information required by the department.

**(4) LICENSE FEES.** A person applying for an annual fertilizer license shall pay the following fees and surcharges:

(a) A \$30 license fee for each business location and each mobile unit at which the applicant proposes to manufacture fertilizer in this state. If the applicant distributes but does not manufacture fertilizer in this state, the applicant shall pay a single license fee of \$30.

(b) A \$20 agricultural chemical cleanup surcharge for each business location and each mobile unit at which the applicant proposes to manufacture fertilizer in this state, other than a business location or mobile unit licensed under s. 94.685 or 94.703, Stats. If the applicant distributes but does not manufacture fertilizer in this state, the applicant shall pay a single agricultural chemical cleanup surcharge of \$20.

(c) A late renewal fee equal to 20% of the combined license fees and surcharges required under pars. (a) and (b), whichever is greater, if the applicant fails to apply for a renewal license before the prior year’s license expires.

**NOTE:** The late fee under par. (c) is required by s. 93.21, Stats.

**(5) ACTION ON LICENSE APPLICATION.** (a) Except as provided in par. (d), the department shall grant or deny a license application under sub. (3) within 45 working days after the department receives a complete application.

(b) The department may place conditions on a license. If the department denies a license or issues a license with conditions, the department shall give the applicant written notice of its reasons.

1 (c) A license holder may not distribute a fertilizer for which a permit is also  
2 required under s. ATCP 40.12, unless the license holder also holds that permit.

3 (d) If a license applicant does not manufacture fertilizer in Wisconsin, but seeks a  
4 license only to distribute a fertilizer for which a permit is required under s. ATCP 40.12,  
5 the department may grant or deny the license application when it grants or denies the  
6 permit application.

7 **ATCP 40.06 Fertilizer; tonnage reports and fees. (1) ANNUAL TONNAGE**  
8 **REPORT AND FEE PAYMENT.** By August 14 of each year, a person required to hold a  
9 fertilizer license under s. ATCP 40.04 shall do all of the following:

10 (a) Report to the department the number of tons of each grade of fertilizer that the  
11 person distributed in this state in the 12 months ending June 30 of that year. The person  
12 shall file the report in writing, on a form prescribed by the department.

13 (b) Pay fees and surcharges under sub. (2). The person shall include the payment  
14 with the tonnage report under par. (a).

15 **(2) FEE AMOUNTS.** Except as provided in sub. (3), a person shall pay the  
16 following fees and surcharges on tonnage reported under sub. (1)(a):

17 (a) A basic fee of 30 cents per ton, or \$25, whichever is greater.

18 (b) A research fee of 10 cents per ton, or \$1, whichever is greater.

19 (c) An additional research fee of 10 cents per ton, or \$1, whichever is greater.

20 (d) A groundwater fee of 10 cents per ton, or \$1, whichever is greater.

21 (e) A weights and measures inspection fee of 2 cents per ton, or \$1, whichever is  
22 greater.

1 (f) An agricultural chemical cleanup surcharge of 86 cents per ton.

2 (3) FEE EXEMPTIONS. The fees under sub. (2) do not apply to fertilizer sold, for  
3 resale or further manufacturing, to a person licensed under s. ATCP 40.04.

4 (4) COMBINATIONS AND FILLERS. A person shall include all of the following in  
5 the tonnage reported under sub. (1)(a):

6 (a) Combination products, if any.

7 (b) All fillers, carriers and fluids included with a fertilizer at the time of  
8 distribution.

9 (5) PENALTIES FOR LATE FILING. A person who fails to comply with sub. (1) by  
10 August 14 shall pay an additional fee of 10 percent of the tonnage fees due, but not less  
11 than \$10.

12 **NOTE:** The department may also suspend a license or permit for nonpayment of  
13 fees.  
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15 (6) TONNAGE INFORMATION CONFIDENTIAL. The department may not release  
16 information showing the grades or amounts of fertilizer that an individual license holder  
17 has sold, or the fees or surcharges that an individual license holder has paid under this  
18 section. The department may publish aggregate summaries that do not reveal individual  
19 license holder information.

20 **ATCP 40.08 Fertilizer labeling. (1) PACKAGED FERTILIZER.** Packaged fertilizer  
21 shall be clearly and conspicuously labeled with all of the following:

22 (a) The name and address of the licensed manufacturer or distributor.

23 (b) The fertilizer product name.

24 (c) The fertilizer grade if the fertilizer is represented as containing any primary

1 nutrients. The fertilizer grade shall conform to the guaranteed analysis for total nitrogen  
2 (N), available phosphate ( $P_2O_5$ ) and soluble potash ( $K_2O$ ). The grade shall be stated in  
3 whole numbers except that a grade value may be stated in decimal units with a preceding  
4 zero when the guarantee is less than one percent.

5 (d) A guaranteed analysis that complies with s. ATCP 40.10.

6 (e) The net weight of the fertilizer contained in the package.

7 (f) Any statements or disclaimers required under subs. (4) to (6).

8 (g) Any other information required under this chapter.

9 **(2) BULK FERTILIZER.** (a) A person distributing bulk fertilizer to another person  
10 shall give the recipient a written label statement with each delivery. The written label  
11 statement shall clearly and conspicuously disclose all of the following:

12 1. The name and address of the licensed manufacturer or distributor.

13 2. The name and address of the recipient.

14 3. The date of delivery.

15 4. The product name, if any.

16 5. The fertilizer grade, except as provided in par. (b). The fertilizer grade shall be  
17 stated in whole numbers and shall conform to the guaranteed analysis for total nitrogen  
18 (N), available phosphate ( $P_2O_5$ ) and soluble potash ( $K_2O$ ).

19 6. A guaranteed analysis, except as provided in par. (b). The guaranteed analysis  
20 shall comply with s. ATCP 40.10.

21 7. The net weight of each lot or load included in the delivery.

22 8. Other information required under this chapter.

1 (b) A manufacturer who custom mixes bulk fertilizer for a purchaser may provide  
2 the purchaser with a written statement listing the weight and grade of each ingredient  
3 included in the custom mixed fertilizer. A manufacturer of bulk custom mixed fertilizer  
4 may provide this written ingredient statement in place of a written grade statement and  
5 guaranteed analysis unless the purchaser contracts for a specified grade of custom mixed  
6 fertilizer.

7 (c) A person who sells bulk agricultural fertilizer to a landowner shall record the  
8 name and address of the nutrient management planner who prepared the landowner's  
9 nutrient management plan, if the landowner has a nutrient management plan under s.  
10 ATCP 50.04(3). The seller may record this information on the label statement required  
11 under par. (a) if the seller retains a copy of that statement. The seller shall keep the  
12 required information for at least 24 months after the seller files the fertilizer tonnage  
13 report required under s. ATCP 40.06(1).

14 (d) A manufacturer or distributor who stores bulk fertilizer shall attach, to each  
15 storage bin or container, a label that clearly and conspicuously identifies the name or  
16 grade of the fertilizer stored in that bin or container. The grade, if stated, shall be stated  
17 in whole numbers.

18 **NOTE:** See ch. COMM 43 and ch. ATCP 32 related to anhydrous ammonia  
19 systems and bulk storage of fertilizer.  
20

21 **(3) COMBINATION PRODUCTS.** (a) Fertilizer-additive combinations shall be  
22 labeled according to this section and s. ATCP 40.24. The label format shall be as shown  
23 in *Appendix A*.

24 (b) Fertilizer-pesticide combinations that are not custom mixed shall be labeled

1 according to this section and s. ATCP 29.06.

2 (c) Fertilizer-pesticide combinations that are custom mixed shall be labeled  
3 according to this section. A person who sells or distributes a custom mixed fertilizer-  
4 pesticide combination shall provide all of the following to the person who receives that  
5 product from the seller or distributor:

6 1. The label of each pesticide used to make the product.

7 2. The product's written formula. The formula shall identify all of the pesticides  
8 and other ingredients contained in the product, together with the amount by weight of  
9 each ingredient.

10 (d) Fertilizer-seed combinations shall be labeled according to this section and ch.  
11 ATCP 20.

12 (e) Fertilizer-liming material combinations shall be labeled according to this  
13 section and ch. ATCP 41.

14 (f) Combination products shall be labeled with all the following:

15 1. The purposes for which the product is effective.

16 2. Complete use directions to ensure efficacy, usefulness and safety, under  
17 Wisconsin conditions, for each purpose identified under subd. 1. Use directions shall  
18 include recommended application sites, rates, frequency, timing and methods.

19 (g) A combination product label shall accurately state the contents of the  
20 combination product, not just the components of the combination product.

21 **(4) HAZARD CAUTION STATEMENT.** (a) A fertilizer label shall include a caution  
22 statement if the fertilizer may be toxic to plants or animals when the fertilizer is handled

or applied under reasonably foreseeable use conditions. The label shall warn the user of the potential hazard, and shall explain how to prevent or minimize the hazard.

(b) Labels for fertilizer products, other than fertilizer-pesticide combination products, shall comply with ch. ATPC 139 and ss. 100.37 and 100.42, Stats., as applicable.

**NOTE:** For example, boron, molybdenum and nickel may be toxic to crops and crop-consuming animals when applied at excessive rates or at inappropriate sites. Fertilizers containing these substances may need caution statements to prevent or minimize toxicity hazards. Chapter ATPC 139 and ss. 100.37 and 100.42, Stats., regulate consumer product safety and hazardous substances (pesticides are separately regulated under ss. 94.67-71, Stats.). See also sub. (5) and s. ATPC 40.18.

(5) FOLIAR FERTILIZERS. (a) Except as provided in par. (b), a foliar fertilizer label shall disclose all of the following:

1. The purposes for which the labeler claims that foliar application is effective and useful.

2. Complete use directions to ensure that foliar application will be effective and useful for each recommended purpose, under Wisconsin conditions. Use directions shall identify recommended application sites, rates, frequency, timing and methods.

(b) Paragraph (a) does not apply if the foliar fertilizer label includes all of the following that apply:

1. The following clear and conspicuous written statement if the fertilizer label guarantees primary plant nutrients:

**“Foliar fertilization with primary nutrients will not provide the quantities of nutrients required for normal plant growth. This product may cause foliar burn if applied in higher than recommended rates or concentrations. Use only as a supplement to a regular fertilization program.”**



2. The following clear and conspicuous written statement if the fertilizer label guarantees secondary nutrients or micronutrients:

**“Foliar fertilization can be an effective remedy for diagnosed plant deficiencies of secondary nutrients and micronutrients, but may cause plant damage if applied at more than recommended rates or concentrations. Use of this product is recommended only as a supplement to a regular fertilization program and only on plants with confirmed secondary nutrient or micronutrient deficiencies.”**

(6) USE DIRECTIONS. (a) The label of a fertilizer product for which a permit is required under s. ATCP 40.12(1) shall clearly disclose all of the following:

1. The purposes for which the fertilizer product is recommended.

2. Use directions to ensure effectiveness, under Wisconsin conditions, for each recommended purpose. Use directions for non-agricultural fertilizers shall identify recommended application sites, rates, frequency, timing and methods.

(b) The department may require supplementary label disclosures if the department finds that, in the absence of those disclosures, the label statements under par.

(a) may be deceptive or misleading. A failure to require supplementary disclosures does not constitute a finding, by the department, that the product is properly labeled.

**NOTE:** For example, if a label implies that a product is effective for an entire season, but the product does not provide enough nutrients for season-long effectiveness when applied according to label directions, the department might require supplementary disclosures to remedy the deceptive or misleading implication. Disclosures might include, for example, a limitation of efficacy claims or a disclosure of nutrient amounts compared to annual plant nutrient needs.

(7) SUBSTANTIATING FERTILIZER CLAIMS. (a) A person who is required to hold a license under s. ATCP 40.04 shall have all of the following:

1. Relevant and reliable information to substantiate all fertilizer labeling,

1 including any claim or guarantee related to fertilizer contents. The person shall have  
2 substantiation for each labeling statement before making that statement. Testimonials are  
3 not reliable information under this subdivision.

4         2. Relevant scientific evidence to substantiate every performance claim made for  
5 a fertilizer product for which a permit is required under s. ATPCP 40.12(1). Performance  
6 claims include implied warranties, if any, under s. ATPCP 40.12(6). The scientific  
7 evidence shall substantiate each performance claim under Wisconsin conditions,  
8 assuming that the product is applied for recommended purposes according to label  
9 directions. The person shall have that scientific evidence before making the performance  
10 claim. Testimonials are not scientific evidence under this subdivision.

11         (b) The department may require a person to submit substantiating information  
12 under par. (a). The department may require the person to submit the information before  
13 or after the department issues a license under s. ATPCP 40.04 or a permit under s. ATPCP  
14 40.12. The issuance of a license or permit does not create any finding or presumption  
15 that the license or permit holder has complied with par. (a).

16         **(8) TERMS AND DEFINITIONS.** Terms used in fertilizer labeling shall be consistent  
17 with the fertilizer terms and definitions contained in the Official Publication of the  
18 Association of American Plant Food Control Officials, No. 57 (2004).

19         **NOTE:** The Official Publication of the Association of American Plant Food  
20 Control Officials, No. 57 (2004) is on file with the department, the  
21 secretary of state and the revisor of statutes. Copies may be obtained from  
22 the treasurer of the Association of American Plant Food Control Officials,  
23 Inc., North Carolina Department of Agriculture, P.O. Box 33508, Raleigh,  
24 NC 33636-3508, or online at <http://www.aapfco.org>.

1           **ATCP 40.10 Fertilizer; guaranteed analysis. (1) GENERAL.** (a) A fertilizer  
2 label shall contain a guaranteed analysis that complies with this section. A guaranteed  
3 analysis may guarantee any plant nutrients or enhancing elements identified in sub. (2),  
4 and shall guarantee at least one of the plant nutrients identified in sub. (2). Each  
5 guarantee shall be expressed as a minimum guaranteed percentage by weight of the  
6 fertilizer.

7           **NOTE:** All of the materials identified in sub. (2), except cobalt and sodium, are  
8 plant nutrients. Cobalt and sodium are “enhancing elements.” *See* ATCP  
9 40.01(7).  
10

11           (b) No person may represent any of the following:

12           1. That a fertilizer contains any plant nutrient unless that plant nutrient is  
13 identified in sub. (2) and in the guaranteed analysis under par. (a).

14           2. That a fertilizer contains the enhancing element cobalt or sodium unless that  
15 enhancing element is included in the guaranteed analysis under par. (a).

16           3. That a fertilizer contains an enhancing element other than cobalt or sodium,  
17 unless that enhancing element is guaranteed as a soil or plant additive ingredient under  
18 sub. (10).

19           **NOTE:** A fertilizer that claims enhancing elements, other than cobalt and  
20 sodium, is considered a “fertilizer-additive combination.” *See* ATCP  
21 40.01(9).  
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23           **(2) MINIMUM GUARANTEES.** (a) Except as provided in par. (b), no person may  
24 represent that a fertilizer contains any of the following plant nutrients or enhancing  
25 elements unless that plant nutrient or enhancing element is guaranteed at or above the  
26 following amount:

1	<b>Plant Nutrient</b>	<b>Minimum Guarantee</b>
2	Total Nitrogen (N)	1.0%
3	Available Phosphate (P <sub>2</sub> O <sub>5</sub> )	1.0%
4	Soluble Potash (K <sub>2</sub> O)	1.0%
5	Calcium (Ca)	1.0%
6	Magnesium (Mg)	0.5%
7	Sulfur (S)	1.0%
8	Boron (B)	0.02%
9	Chlorine (Cl)	0.1%
10	Cobalt (Co)	0.0005%
11	Copper (Cu)	0.05%
12	Iron (Fe)	0.1%
13	Manganese (Mn)	0.05%
14	Molybdenum (Mo)	0.0005%
15	Nickel (Ni)	0.05%
16	Sodium (Na)	0.1%
17	Zinc (Zn)	0.05%
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19	(b) Paragraph (a) does not apply to any of the following:	
20	1. Ready-to-use liquid fertilizer labeled only for nonagricultural uses.	
21	2. Fertilizer labeled only for hydroponic or continuous plant feeding use.	
22	3. Potting soil with nutrient guarantees.	
23	4. Primary nutrient guarantees, authorized under s. ATCP 40.12(9), for fertilizer	
24	distributed pursuant to a permit under s. ATCP 40.12.	
25	(c) Except as provided in sub. (6)(b) or (7), a fertilizer label may not identify any	
26	plant nutrient that has a guarantee of zero.	
27	(3) FORMAT. A guaranteed analysis shall appear in the following format:	
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**GUARANTEED ANALYSIS**

<b>Total Nitrogen (N)</b> .....	___%
___% Ammoniacal Nitrogen	
___% Nitrate Nitrogen	
___% Water Insoluble Nitrogen	
___% (Other recognized and determinable forms of nitrogen)	
<b>Available Phosphate (P<sub>2</sub>O<sub>5</sub>)</b> .....	___%
<b>Soluble Potash (K<sub>2</sub>O)</b> .....	___%
<b>Calcium (Ca)</b> .....	___%
<b>Magnesium (Mg)</b> .....	___%
<b>Sulfur (S)</b> .....	___%
<b>Boron (B)</b> .....	___%
<b>Chlorine (Cl)</b> .....	___%
<b>Cobalt (Co)</b> .....	___%
<b>Copper (Cu)</b> .....	___%
<b>Iron (Fe)</b> .....	___%
<b>Manganese (Mn)</b> .....	___%
<b>Molybdenum (Mo)</b> .....	___%
<b>Nickel (Ni)</b> .....	___%
<b>Sodium (Na)</b> .....	___%
<b>Zinc (Zn)</b> .....	___%

**NOTE:** Percentage guarantees must equal or exceed the minimum guarantees specified in sub. (2).

- (4) NUTRIENT SOURCE STATEMENT.** (a) A guaranteed analysis shall include a separate nutrient source statement if any of the following apply:
1. The sum of the guarantees for the primary plant nutrients is less than 24%.
  2. The fertilizer is a fertilizer-additive combination.
  3. The fertilizer label represents that the fertilizer contains an organic or slowly released plant nutrient.
- (b) A plant nutrient source statement under par. (a) shall do all of the following:
1. Identify the source materials from which the guaranteed plant nutrients are derived, in descending order of content by weight of source material.

2. Identify the source of each plant nutrient, using only terms defined in the Official Publication of the Association of American Plant Food Control Officials, No. 57 (2004).

**NOTE:** The Official Publication of the Association of American Plant Food Control Officials, No. 57 (2004) is on file with the department, the secretary of state and the revisor of statutes. Copies may be obtained from the treasurer of the Association of American Plant Food Control Officials, Inc., North Carolina Department of Agriculture, P.O. Box 33508, Raleigh, NC 33636-3508, or online at <http://www.aapfco.org>.

**(5) PERCENTAGE GUARANTEES; HOW EXPRESSED.** (a) A zero shall precede the decimal point in every guarantee that is less than one percent.

(b) A minimum guarantee for a primary plant nutrient shall be stated as a whole number if the guarantee is at least 1.0%.

**(6) CHEMICAL FORMS.** (a) If a guaranteed analysis identifies any chemical form of a plant nutrient that has more than one chemical form, it shall identify all chemical forms of the plant nutrient and provide a percentage guarantee for each. The percentage guarantee for each chemical form shall precede the identified chemical form and may include non-zero decimal units. Subsection (3) illustrates the correct format for nitrogen.

(b) A chemical form under par. (a) may have a percentage guarantee of zero, provided that the combined guarantee for all chemical forms of the plant nutrient equals or exceeds the minimum guarantee required under sub. (2).

(c) No person may represent that a fertilizer contains an organic or slowly released plant nutrient unless all of the following apply:

1. The guaranteed analysis lists slowly released chemical forms of that plant nutrient.

1           2. The combined guarantees for slowly released forms of the plant nutrient  
2   comprise at least 15% of the total guarantee for that plant nutrient, except as otherwise  
3   provided for nitrogen under sub. (8)(b).

4           **(7) MAXIMUM GUARANTEES.** (a) A fertilizer label may contain a separate written  
5   statement, not part of the guaranteed analysis, which states that the amount of a specified  
6   plant nutrient or other substance does not exceed a specified percentage by weight of the  
7   fertilizer.

8           (b) No person may sell or distribute a fertilizer for use on tobacco unless its label  
9   states the maximum amount of chlorine that may be present in the fertilizer.

10          **(8) NITROGEN GUARANTEES.** (a) A nonagricultural fertilizer label shall guarantee  
11   the ammoniacal, nitrate, water insoluble and other chemical forms of nitrogen, as  
12   illustrated in sub. (3).

13          (b) No fertilizer label may identify nitrogen as organic unless the water insoluble  
14   or slow release nitrogen guarantee is at least 60% of the non-urea nitrogen designated as  
15   organic.

16          **(9) PHOSPHITE AND PHOSPHOROUS ACID.** (a) Notwithstanding sub. (5)(a):

17           1. No fertilizer labeling may identify phosphite or phosphorous acid as a fertilizer  
18   ingredient.

19           2. No phosphate nutrient guarantee may include any phosphate derived from  
20   phosphite or phosphorous acid.

21          (b) Paragraph (a) does not prohibit the identification, in a fertilizer–pesticide  
22   combination, of a pesticide containing phosphite or phosphorous acid.

1           **(10) FERTILIZER-ADDITIVE COMBINATIONS.** The guaranteed analysis for a  
2 fertilizer-additive combination shall be in the format shown in *Appendix A*. Enhancing  
3 nutrients other than cobalt and sodium, if claimed, shall be guaranteed as soil or plant  
4 additive active ingredients.

5           **NOTE:** See definitions of “enhancing element” and “fertilizer-additive  
6 combination” in ss. ATPC 40.01(7) and (9).  
7

8           **ATPC 40.12 Fertilizer permits. (1) PERMIT REQUIRED.** Except as provided in  
9 sub. (2), no person may distribute a mixed fertilizer for which the sum of the primary  
10 plant nutrient guarantees totals less than 24% unless one of the following applies:

11           (a) The distribution is for special agricultural uses, pursuant to a permit under  
12 sub. (4).

13           (b) The distribution is for nonagricultural uses, pursuant to a permit under  
14 sub. (5).

15           **(2) EXEMPTIONS.** Subsection (1) does not apply to any of the following:

16           (a) A fertilizer labeled with the statement "for further manufacturing use only"  
17 and distributed to licensed fertilizer manufacturers who use the fertilizer only for further  
18 manufacturing.

19           (b) A fertilizer provided without cost to a recognized research institution solely  
20 for the purpose of conducting scientific research.

21           (c) A fertilizer derived from a single source material of uniform plant nutrient  
22 content, provided that all of the following apply:

23           1. The source material is accurately described by a term defined in the Official  
24 Publication of the Association of American Plant Food Control Officials, No. 57 (2004).



1       **NOTE:** The Official Publication of the Association of American Plant Food  
2       Control Officials, No 57 (2004) is on file with the department, the  
3       secretary of state and the revisor of statutes. Copies may be obtained from  
4       the treasurer of the Association of American Plant Food Control Officials,  
5       Inc., North Carolina Department of Agriculture, P.O. Box 33508, Raleigh,  
6       NC 33636-3508, or online at <http://www.aapfco.org>.  
7

8       2. The source material and the fertilizer are clearly and conspicuously labeled  
9       using the defined term under subd. 1.

10       (d) A fertilizer labeled solely for organic crop production if all of the following  
11       apply:

12       1. The fertilizer qualifies, or all of its ingredients qualify, under 7 CFR 205 for  
13       use in organic crop production.

14       2. The fertilizer label discloses the listing or approval under subd. 1.

15       3. The fertilizer label conspicuously states that **“This product is intended for**  
16       **use according to an approved organic system plan.”**

17       4. The manufacturer or distributor makes no performance claims for the product.

18       5. The product label provides use directions, including use rates and methods of  
19       application.

20       **(3) PERMIT APPLICATION.** A person seeking a permit under sub. (4) or (5) shall  
21       apply on a form provided by the department. The application shall include all of the  
22       following:

23       (a) The applicant’s name, business address and fertilizer license number under s.  
24       ATCP 40.04. If the applicant does not have a fertilizer license, the applicant shall also  
25       submit a license application under s. ATCP 40.04. No permit under sub. (4) or (5) is  
26       valid unless the permit holder also holds a current license under s. ATCP 40.04.

1 (b) The name, business address and fertilizer license number of the fertilizer  
2 manufacturer if the applicant is not the manufacturer.

3 (c) The fertilizer label.

4 (d) Proposed labeling, including any advertising or promotional materials that  
5 make content or performance claims not included on the product label.

6 (e) A statement indicating whether the applicant seeks a permit under sub. (4) or  
7 (5), or both.

8 **NOTE:** A person may, for a single product, need permits under both sub. (4) and  
9 sub. (5).

10  
11 (f) A fee of \$25 for each requested permit.

12 (g) The following written statement signed by the applicant:

13 **“I hereby certify all the following:**

14  
15 **1. When applied for labeled purposes according to label directions, this**  
16 **fertilizer provides available nutrients in amounts that are efficacious and**  
17 **useful under Wisconsin conditions. Except as otherwise specifically**  
18 **disclosed on the product label, use according to label directions provides**  
19 **annual nutrient amounts that equal or exceed annual plant nutrient**  
20 **needs.**

21  
22 **2. The statements on this fertilizer label, and in related advertising and**  
23 **promotional materials, are truthful. The applicant has relevant and**  
24 **reliable information to substantiate all product labeling, including any**  
25 **claim or guarantee related to product contents. The applicant has**  
26 **relevant scientific evidence to substantiate all express and implied**  
27 **performance claims.**

28  
29 **3. This fertilizer product and its labeling comply with ch. ATCP 40, Wis.**  
30 **Adm. Code.”**

31  
32 (h) Other relevant information required by the department.

33 **NOTE:** You may obtain a permit application form from the department at the  
34 following address:

35

1 Department of Agriculture, Trade and Consumer Protection  
2 ARM Division  
3 PO Box 8911  
4 Madison, WI 53708-8911.  
5

6 **(4) SPECIAL AGRICULTURAL USE PERMIT.** The department may issue a special  
7 agricultural use permit if the department finds, based on a review under subch. IV, that  
8 the application is complete and the fertilizer is designed and labeled as a special  
9 agricultural-use fertilizer.

10 **(5) NONAGRICULTURAL USE PERMIT.** The department may issue a nonagricultural  
11 use permit if the department finds, based on a review under subch. IV, that the application  
12 is complete and the fertilizer is designed and labeled only as a nonagricultural-use  
13 fertilizer.

14 **(6) IMPLIED WARRANTY.** A person who distributes a fertilizer product pursuant to  
15 a permit under this section implicitly warrants that the product is effective for all of the  
16 purposes recommended in the product labeling, when applied under Wisconsin conditions  
17 according to the product label. This warranty does not limit any other express or implied  
18 warranty that may apply under Wisconsin law. The department does not warrant the  
19 efficacy or usefulness of any fertilizer, or the truth of any labeling statement.

20 **(7) PERMIT NOT TRANSFERABLE.** A permit under this section covers only one  
21 fertilizer product. A permit is not transferable between persons or products.

22 **(8) FERTILIZER-ADDITIVE COMBINATIONS.** A permit under this section does not  
23 authorize a person to distribute a fertilizer-additive combination in this state unless the  
24 person also holds a license under s. ATCP 40.20 and a permit, if required, under s. ATCP  
25 40.28.

1           **(9) PRIMARY NUTRIENT GUARANTEES.** A permit under this section may authorize  
2 a minimum guarantee of less than 1.0% for any primary plant nutrient if all of the  
3 following apply:

- 4           1. The primary plant nutrient guarantee is at least 0.1%.
- 5           2. The total of all primary plant nutrients in the product is less than 10%.

6           **(10) ACTION ON PERMIT APPLICATION.** The department shall act on a permit  
7 application according to subch. IV.

8           **ATCP 40.14 Fertilizer content deficiencies. (1) PRIMARY NUTRIENTS.** A  
9 fertilizer is mislabeled if any of the following apply, based on a sample collected and  
10 tested according to s. ATCP 40.16:

11           (a) The fertilizer contains less than 90% of the label guarantee amount for any  
12 primary nutrient.

13           (b) The actual percentage amount of any primary nutrient falls at least 2  
14 percentage points short of the percentage amount stated on the label.

15           **NOTE:** For example, if the label states that the fertilizer contains 30% N, but  
16 testing shows that the fertilizer contains only 27.5% N, the fertilizer is  
17 mislabeled.

18  
19           (c) The economic value of primary nutrients actually present is less than 98% of  
20 the economic value of the amounts guaranteed, where economic value is calculated  
21 according to sub. (3).

22           **(2) SECONDARY AND MICRONUTRIENTS.** A fertilizer is mislabeled if, based on a  
23 sample collected and tested according to s. ATCP 40.16, the actual amount of any  
24 secondary nutrient, micronutrient or enhancing element listed in a guaranteed analysis

- 1 falls short of the label guarantee by an amount that exceeds the allowable deficiency  
2 shown in Table 1.

**TABLE 1.**

ELEMENT	ALLOWABLE DEFICIENCY (SUM EXPRESSED AS % OF LABEL GUARANTEE)
Calcium Magnesium Sulfur	0.2 + 5% of the label guarantee
Boron	0.003 + 15% of the label guarantee
Cobalt Molybdenum	0.0001 + 30% of the label guarantee
Chlorine Copper Iron Manganese Nickel Sodium Zinc	0.005 + 10% of the label guarantee

- 3  
4 **(3) ECONOMIC VALUE.** Economic value, for purposes of sub. (1)(c), equals {[total  
5 nitrogen (N) guarantee] x 2} + {[available phosphate (P<sub>2</sub>O<sub>5</sub>) guarantee] x 2} + {soluble  
6 potash (K<sub>2</sub>O) guarantee}.

7 **NOTE:** The multipliers in sub. (3) are based on approximate relative average  
8 wholesale prices for primary plant nutrients in Wisconsin. The department  
9 will conduct periodic wholesale price surveys and will adjust the  
10 multipliers, as the department deems necessary, by rule.  
11

- 12 **(4) CUSTOM MIXED FERTILIZER.** Label guarantees for a custom mixed fertilizer  
13 shall be calculated from the custom mix formulation.

14 **ATCP 40.16 Fertilizer sampling and analysis. (1) SAMPLING METHODS.** The

1 department may collect official fertilizer samples to determine compliance with plant  
2 nutrient guarantees. The department shall collect official samples using applicable  
3 methods from the Inspectors Manual of the Association of American Plant Food Control  
4 Officials, 6<sup>th</sup> edition (1999).

5 **NOTE:** The Inspectors Manual of the Association of American Plant Food  
6 Control Officials, 6<sup>th</sup> edition (1999) is on file with the department, the  
7 secretary of state and the revisor of statutes. Copies are available from the  
8 treasurer of the Association of American Plant Food Control Officials,  
9 Inc., North Carolina Department of Agriculture, P.O. Box 33508, Raleigh,  
10 NC 33636-3508, or online at <http://www.aapfco.org>.

11  
12 **(2) TEST METHODS.** The department may test official fertilizer samples to  
13 determine compliance with nutrient guarantees. The department shall test official  
14 samples using applicable methods from the “Official Methods of Analysis of AOAC  
15 International,” volume I, 17<sup>th</sup> edition as updated by the 2<sup>nd</sup> revision (2003).

16 **NOTE:** The “Official Methods of Analysis of AOAC International,” volume I,  
17 17<sup>th</sup> edition as updated by the 2<sup>nd</sup> revision (2003) is on file with the  
18 department, the secretary of state and the revisor of statutes. Copies are  
19 available from AOAC International at 481 N. Frederick Ave., Suite 500,  
20 Gaithersburg, MD 20877-2417.

21  
22 **ATCP 40.18 Fertilizer; toxic substances. (1)** No fertilizer may contain any  
23 substance that is toxic or injurious to plants, animals or humans when the fertilizer is  
24 handled or applied under reasonably foreseeable use conditions unless the substance and  
25 hazard are disclosed on the fertilizer label.

26 **NOTE:** See s. ATCP 40.08.

27 **(2)** No fertilizer may contain a metal in a concentration that exceeds the  
28 maximum allowable concentration specified for that metal in the statement of uniform  
29 interpretation and policy No. 25, contained in the Official Publication of the Association

of American Plant Food Control Officials, No. 57 (2004).

**NOTE:** Statement of uniform interpretation and policy 25, from the Official Publication of the Association of American Plant Food Control Officials, No 57 (2004), is on file with the department, the secretary of state and the revisor of statutes. Copies may be obtained from the treasurer of the Association of American Plant Food Control Officials, Inc., North Carolina Department of Agriculture, P.O. Box 33508, Raleigh, NC 33636-3508, or online at <http://www.aapfco.org>.

### **SUBCHAPTER III SOIL OR PLANT ADDITIVES**

#### **ATCP 40.20 Soil or plant additives; license. (1) ANNUAL LICENSE REQUIRED.**

Except as provided in sub. (2), no person may manufacture or distribute a soil or plant additive in this state without an annual license from the department. A license is not transferable between persons. A license expires on March 31 of each year.

**NOTE:** Since a license is not transferable between persons, a license holder must apply for a new license if it changes its legal identity.

**(2) EXEMPTION.** The license requirement under sub. (1) does not apply to a person who merely distributes a soil or plant additive packaged and labeled by a license holder who also holds any permit required under s. ATCP 40.28(1), provided the person makes no additional content or performance claims for the product.

**(3) LICENSE APPLICATION.** A person shall apply for an annual license under sub. (1) on a form provided by the department. An application shall include all of the following:

(a) The applicant's correct legal name, and any trade name under which the applicant does business.

(b) The applicant's social security number if the applicant is an individual. If the

1 applicant is a partnership, the application shall include the social security number of each  
2 individual partner.

3 **NOTE:** A social security number is required under s. 93.135(1)(d), Stats.

4 (c) Each address from which the applicant proposes to do business in this state.

5 (d) Each address at which the applicant proposes to manufacture a soil or plant  
6 additive in this state. A license holder shall notify the department in writing before  
7 manufacturing a soil or plant additive at any other address.

8 (e) The fees required under sub. (4).

9 (f) A current list of soil or plant additives for which the applicant requires permits  
10 under s. ATP 40.28(1), and the current label for each of those products.

11 **NOTE:** A license under sub. (1) does not authorize the license holder to  
12 manufacture or distribute a soil or plant additive for which a permit is  
13 required under s. ATP 40.28 unless the license holder holds that permit.

14  
15 (g) Other relevant information required by the department.

16 **(4) LICENSE FEES.** A person applying for an annual soil or plant additive license  
17 shall pay the following fees and surcharges:

18 (a) A license fee of \$25.

19 (b) A late renewal fee of \$5 if the applicant fails to apply for a renewal license  
20 before the prior year's license expires.

21 **NOTE:** See s. 93.21, Stats.

22  
23 **(5) ACTION ON LICENSE APPLICATION.** (a) Except as provided in par. (d), the  
24 department shall grant or deny a license application under sub. (3) within 45 working  
25 days after the department receives a complete application.



1 (b) The department may place conditions on a license. If the department denies a  
2 license application or issues a license with conditions, the department shall give the  
3 applicant written notice of the reasons.

4 (c) A license holder may not distribute a soil or plant additive for which a permit  
5 is required under s. ATCP 40.28(1) unless the license holder also holds that permit.

6 (d) If a license applicant does not manufacture soil or plant additives in  
7 Wisconsin, but seeks a license only to distribute a soil or plant additive for which a  
8 permit is required under s. ATCP 40.28(1), the department may grant or deny the license  
9 application when it grants or denies the permit application.

10 **ATCP 40.22 Soil or plant additives; tonnage reports and fees. (1) ANNUAL**  
11 **TONNAGE REPORT AND FEE PAYMENT.** By March 31 of each year, a person required to  
12 hold a license under s. ATCP 40.20 shall do all of the following:

13 (a) Report to the department the number of tons of each soil or plant additive the  
14 person distributed in this state in the preceding calendar year. The person shall file the  
15 report in writing, on a form provided by the department.

16 (b) Pay fees and surcharges under sub. (2). The person shall include the payment  
17 with the tonnage report under par. (a).

18 **(2) FEE AMOUNTS.** A person shall pay the following fees and surcharges on  
19 tonnage reported under sub. (1)(a):

20 (a) A basic fee of 25 cents per ton, or \$25, whichever is greater.

21 (b) A research fee of 10 cents per ton, or \$1, whichever is greater.

22 (c) A groundwater fee of 10 cents per ton, or \$1, whichever is greater.

1           **(3) COMBINATIONS AND FILLERS.** A person shall include all of the following in  
2 the tonnage reported under sub. (1)(a):

3           (a) Combination products that contain a soil or plant additive, if any.

4           (b) All fillers, carriers and fluids included with a soil or plant additive at the time  
5 of distribution.

6           **(4) PENALTIES FOR LATE FILING.** A person who fails to comply with sub. (1) by  
7 March 31 shall pay an additional fee of 10 percent of the tonnage fees due, but not less  
8 than \$10.

9           **NOTE:** The department may also suspend a license or permit for nonpayment of  
10 fees.

11  
12           **ATCP 40.24 Soil or plant additives; labeling. (1) GENERAL.** A soil or plant  
13 additive shall be clearly and conspicuously labeled with all of the following:

14           (a) The name and address of the manufacturer or distributor who is licensed  
15 under s. ATCP 40.20 and who also holds a permit for that product under s. ATCP  
16 40.28(1) if a permit is required.

17           (b) The product name of the soil or plant additive.

18           (c) The net weight or the liquid measure and density of the package or bulk  
19 delivery to which the label applies.

20           (d) The purposes for which the soil or plant additive is recommended and  
21 effective. This paragraph does not apply to a product that is distributed solely for organic  
22 crop production and qualifies for exemption under s. ATCP 40.28(1)(b).

23           (e) Complete use directions to ensure that the product is effective for the purposes  
24 recommended in par. (d). Use directions shall identify recommended application sites,

1 methods, rates and frequencies. If effectiveness depends on use with other products, the  
2 label shall clearly disclose that fact.

3 (f) A guaranteed analysis that complies with s. ATCP 40.26.

4 (g) Any other information required under this chapter.

5 **(2) COMBINATION PRODUCTS.** (a) Fertilizer-additive combinations shall be  
6 labeled according to this section and s. ATCP 40.08.

7 (b) Pesticide-additive combinations shall be labeled according to this section and  
8 s. ATCP 29.06.

9 (c) Products combining a soil or plant additive with seed shall be labeled  
10 according to this section and ch. ATCP 20.

11 (d) Products combining a soil or plant additive with liming material shall be  
12 labeled according to this section and ch. ATCP 41.

13 **(3) HAZARD CAUTION STATEMENT.** (a) A soil or plant additive label shall include  
14 a caution statement if the soil or plant additive may be toxic to plants or animals when the  
15 product is handled or applied under reasonably foreseeable use conditions. The label  
16 shall warn the user of the potential hazard, and shall explain how to prevent or minimize  
17 the hazard.

18 (b) Labels for soil or plant additives, other than pesticide-additive combinations,  
19 shall comply with ch. ATCP 139 and ss. 100.37 and 100.42, Stats., as applicable.

20 **NOTE:** See also sub. (4). Chapter ATCP 139 and ss. 100.37 and 100.42, Stats.,  
21 regulate consumer product safety and hazardous substances.  
22

23 **(4) IMPLIED WARRANTY.** (a) A person who distributes a soil or plant additive  
24 implicitly warrants that the soil or plant additive is effective for all of the purposes

recommended in the product labeling, when applied under Wisconsin conditions according to the product label. This warranty does not limit any other express or implied warranty that may apply under Wisconsin law.

(b) Paragraph (a) does not apply to a product that is distributed solely for organic crop production and qualifies for exemption under s. ATCP 40.28(1)(b). This exemption does not limit any other express or implied warranty that may apply under Wisconsin law.

(c) The department does not warrant the efficacy of any soil or plant additive, or the truth of any label statement.

**(5) PROOF OF PRODUCT CLAIMS.** (a) A person who manufactures or distributes a soil or plant additive shall have all of the following:

1. Relevant and reliable information to substantiate all product labeling, including any claim or guarantee of product contents. The person shall have substantiation for each labeling statement before making that statement. Testimonials are not reliable information under this subdivision.

2. Relevant scientific evidence to substantiate every performance claim, including any implied warranty under sub. (4). The scientific evidence shall substantiate that the product is effective for the stated purpose when applied under Wisconsin conditions according to the product label. The person shall have that scientific evidence before making the claim or implied warranty. Testimonials are not scientific evidence under this subdivision.

(b) The department may require a person to submit substantiating information under par. (a). The department may require the person to submit the information before

1 or after the department issues a license under s. ATP 40.20 or a permit under s. ATP  
2 40.28. The issuance of a license or permit does not create any finding or presumption  
3 that the license or permit holder has complied with par. (a).

4 **ATP 40.26 Soil or plant additives; guaranteed analysis. (1) GENERAL.** The  
5 label of every soil or plant additive shall include a guaranteed analysis that complies with  
6 this section. No person may represent that a soil or plant additive contains any substance  
7 unless that substance is listed in the guaranteed analysis.

8 **(2) FORMAT.** (a) A guaranteed analysis for a soil or plant additive shall have the  
9 following format:

10 **GUARANTEED ANALYSIS**

11 **ACTIVE INGREDIENTS**

12 **Common Name (Chemical Name).....%**

13 **Common Name (Chemical Name) .....%**

14 **Common Name (Chemical Name).....%**

15

16 **INERT INGREDIENTS**

17 **Common Name (Chemical Name).....%**

18 **Common Name (Chemical Name).....%**

19 **Common Name (Chemical Name).....%**

20

21 (b) The combined guarantees for active and inert ingredients shall total 100%

22 unless the guaranteed analysis includes one or more active microorganism ingredients  
23 identified according to sub. (3)(b). A zero shall precede the decimal on any guarantee  
24 that is less than one percent.

25 **(3) ACTIVE INGREDIENTS.** (a) The guaranteed analysis shall identify, under the  
26 “ACTIVE INGREDIENTS” subtitle, each ingredient that actively and directly contributes to  
27 the performance of the soil or plant additive. Except as provided in par. (b), the

1 guaranteed analysis shall guarantee the amount of each active ingredient as a percentage  
2 of the soil or plant additive.

3 (b) If an active ingredient is a microorganism, the guaranteed analysis shall do all  
4 of the following:

5 1. Identify the active microorganism genus. If any activity is unique to a species  
6 of the genus, the guaranteed analysis shall also identify that species.

7 2. Guarantee the number of viable microorganisms or colony forming units  
8 (CFU's), of each identified genus or species, per milliliter of liquid product or per gram  
9 of non-liquid product.

10 (4) INERT INGREDIENTS. The guaranteed analysis shall identify, under the "INERT  
11 INGREDIENTS" subtitle, the name and amount of each ingredient that does not contribute  
12 directly to the performance of the soil or plant additive.

13 (5) INGREDIENT IDENTIFICATION. Except as provided in sub. (3)(b), the  
14 guaranteed analysis shall identify each ingredient by its common name, if any, followed  
15 in parentheses by its chemical name as stated in the Merck Index, 12<sup>th</sup> edition (1996). If  
16 an ingredient is not sufficiently defined in the Merck Index, the department may approve  
17 an additional or alternative name for the ingredient.

18 **NOTE:** The Merck Index, 12<sup>th</sup> edition (1996) is on file with the department, the  
19 secretary of state and the revisor of statutes. Copies are available from  
20 Merck & Co., Inc., Rahway, NJ 07065.

21  
22 (6) MINIMUM GUARANTEES. No soil or plant additive label may identify any  
23 ingredient for which the guaranteed analysis shows a zero guarantee.

24 (7) FERTILIZER-ADDITIVE COMBINATIONS. The guaranteed analysis for a fertilizer-

additive combination shall be in the format shown in *Appendix A*. Plant nutrients shall be guaranteed according to s. ATCP 40.10. Other ingredients shall be guaranteed according to this section.

(8) **FORMAT EXEMPTIONS.** The department may exempt a soil or plant additive from any guaranteed analysis format requirement under this section if the person requesting the exemption demonstrates all of the following to the department's satisfaction:

(a) Another state, which has authorized sale of the soil or plant additive, has a conflicting statute or regulation.

(b) The format exemption will reconcile the conflict under par. (a).

(c) The format exemption will not affect, to the detriment of purchasers in this state, any claim or disclosure related to product performance, use, purpose, efficacy or active ingredients.

(d) The format exemption will not cause the product label to be false, deceptive or misleading in any respect.

(e) The format required by the other state satisfies the objectives of this section.

(f) The format required by the other state does not violate applicable labeling requirements, if any, under chs. ATCP 20, 29 and 41.

**ATCP 40.28 Soil or plant additives; permits. (1) GENERAL.** (a) Except as provided in par. (b), no person may distribute a soil or plant additive in this state without a permit from the department under this section. The department shall review permit applications according to subch. IV.

1 (b) Paragraph (a) does not apply to a soil or plant additive labeled solely for  
2 organic crop production if all of the following apply:

3 1. The product qualifies, or all of its active ingredients qualify, under 7 CFR 205  
4 for use in organic crop production.

5 2. The product label discloses the listing or approval under subd. 1.

6 3. The product label conspicuously states that “**This product is intended for use**  
7 **according to an approved organic system plan.**”

8 4. The manufacturer or distributor makes no performance claims for the product.

9 5. The product label provides use directions, including use rates and methods of  
10 application.

11 **(2) PERMIT APPLICATIONS.** A person seeking a permit under sub. (1) shall apply  
12 on a form provided by the department. The application shall include all of the following:

13 (a) The applicant’s name, business address, and license number under s. ATCP  
14 40.20. If the applicant does not have a license under s. ATCP 40.20, the applicant shall  
15 also submit a license application under s. ATCP 40.20(3). No permit under this section is  
16 valid unless the permit holder also holds a current license under s. ATCP 40.20.

17 (b) The name, business address and license number under s. ATCP 40.20 of the  
18 person who manufactures the soil or plant additive, if the applicant is not the  
19 manufacturer.

20 (c) The product label, including all of the information required under s. ATCP  
21 40.24.

22 (d) Proposed labeling, including any advertising or promotional materials that



1 make content or performance claims not included on the product label.

2 (e) A fee of \$100.

3 (f) The following written statement signed by the applicant:

4 **“I hereby certify all the following:**

5 **1. This product is effective and useful for all labeled purposes when applied**  
6 **under Wisconsin conditions according to label directions.**

7

8 **2. The statements on the product label, and in related advertising and**  
9 **promotional materials, are truthful. The applicant has relevant and**  
10 **reliable information to substantiate all product labeling, including any**  
11 **claim or guarantee related to product contents. The applicant has**  
12 **relevant scientific evidence to substantiate all express and implied**  
13 **performance claims.**

14

15 **3. This product and its labeling comply with ch. ATCP 40, Wis. Adm.**  
16 **Code.”**

17

18 (g) A method of analysis for each guaranteed active ingredient in the soil or plant

19 additive. The method shall be one of the following:

20 1. A method contained in the “Official Methods of Analysis of AOAC

21 International”, volume I, 17<sup>th</sup> edition as updated by the 2<sup>nd</sup> revision (2003).

22 **NOTE:** The “Official Methods of Analysis of AOAC International, volume I,  
23 17<sup>th</sup> edition as updated by the 2<sup>nd</sup> revision (2003) is on file with the  
24 department, the secretary of state and the revisor of statutes. Copies are  
25 available from AOAC International at 481 N. Frederick Ave., Suite 500,  
26 Gaithersburg, MD 20877-2417.

27

28 2. For humic substances, the method contained in ***Appendix B.***

29 3. A method provided by the applicant and approved in writing by the

30 department. The department may not approve a method under this subdivision if a

31 method applies under subd. 1. or 2. A method approved under this subdivision must be

32 relevant and scientifically defensible.

1 (h) Other relevant information required by the department.

2 **NOTE:** You may obtain a permit application form from the department at the  
3 following address:

4  
5 Department of Agriculture, Trade and Consumer Protection  
6 ARM Division  
7 PO Box 8911  
8 Madison, WI 53708-8911.  
9

10 **(3) PERMIT NOT TRANSFERABLE.** A permit under this section covers only one soil  
11 or plant additive product. A permit is not transferable between persons or products.

12 **(4) FERTILIZER-ADDITIVE COMBINATIONS.** A permit under this section does not  
13 authorize a person to distribute a fertilizer-additive combination unless the person also  
14 holds a fertilizer license under s. ATPC 40.04 and a fertilizer permit, if required, under s.  
15 ATPC 40.12.

16 **(5) ACTION ON PERMIT APPLICATION.** The department shall act on a permit  
17 application according to subch. IV.

18 **ATPC 40.30 Soil or plant additives; content deficiencies.** A soil or plant  
19 additive is mislabeled if, based on a sample collected and tested according to s. ATPC  
20 40.32, the product contains less than 98% of the amount of any active ingredient  
21 guaranteed on the package label.

22 **ATPC 40.32 Soil or plant additives; sampling and testing. (1) SAMPLING.**  
23 The department may sample a soil or plant additive to determine whether it contains  
24 ingredients in the amounts guaranteed on the product label, or to test for toxic substances  
25 or other contaminants. The department shall use a sampling method that is appropriate to  
26 the material being sampled.

**(2) TESTING.** The department may determine appropriate methods for testing soil or plant additives. The department shall use methods identified in s. ATCP 40.28(2)(g), if available.

**ATCP 40.34 Soil or plant additives; toxic substances. (1)** No soil or plant additive may contain any substance that is toxic or injurious to plants, animals or humans when the soil or plant additive is handled or applied under reasonably foreseeable use conditions, unless the substance and hazards are identified on the product label.

**NOTE:** See s. ATCP 40.24.

(2) No soil or plant additive may contain a metal identified in *Appendix C* in a concentration that exceeds the maximum allowable concentration specified for that metal in *Appendix C*.

## SUBCHAPTER IV REVIEWING PERMIT APPLICATIONS

**ATCP 40.40 Complete application.** Within 30 working days after a person submits a permit application under s. ATCP 40.12 or 40.28, the department shall determine whether the application is sufficiently complete to warrant further review. If the application is incomplete, the department shall notify the applicant of what is needed to complete the application. The department shall deny the application if the applicant fails to complete the application within 30 days of the department's notice.

**ATCP 40.42 Initial review of permit application.** The department may review a permit application to the extent that it deems appropriate, based on product uses, content, labeling and performance claims. The department may do all of the following as part of its review:

- 1           (1) Review product labeling for compliance with this chapter.
- 2           (2) Review the efficacy and usefulness of the product, under Wisconsin
- 3 conditions, when the product is used according to label directions.
- 4           (3) Review labeling statements, including statements related to product contents
- 5 and performance, to determine whether they are accurate, truthful and properly
- 6 substantiated.

7           **NOTE:** For example, the department may review performance claims such as the

8 following:

9

- 10                   • “Product X helps develop stronger, deeper root systems to help plants
- 11 fight against minor diseases and insect infestations.”
- 12
- 13                   • “Product X will provide plant nutrients needed to give your lawn a golf
- 14 course look.”
- 15

16           (4) Review for possible health, safety and environmental hazards, and for proper

17 labeling of products containing potentially hazardous or toxic ingredients.

18           (5) Review any analytical methodology proposed by the applicant under s. ATCP

19 40.28(2)(g).

20           (6) Review for compliance with other requirements under this chapter.

21           **ATCP 40.44 Action on permit application.** Within 60 working days after the

22 department receives a complete permit application under s. ATCP 40.12 or 40.28, the

23 department shall do one of the following:

24           (1) Issue the permit. The department may limit the time period for which the

25 permit is effective, or impose other permit conditions that it deems necessary. If the

26 department imposes permit conditions, the department shall give the applicant written

27 notice of its reasons.

1           (2) Deny the permit. If the department denies the permit, the department shall  
2 give the applicant written notice of its reasons.

3           (3) Notify the applicant, in writing, that the department will conduct a  
4 supplementary review under s. ATPC 40.46. The notice shall do all the following:

5           (a) Identify the reasons for the supplementary review.

6           (b) Identify the scope of the supplementary review.

7           (c) Identify any additional information that the department requires of the  
8 applicant under s. ATPC 40.46 in order to conduct the supplementary review. The  
9 department may specify the form in which the applicant must submit the information.

10           **ATPC 40.46 Supplementary review. (1) GENERAL.** (a) The department may  
11 conduct a supplementary review of a permit application under s. ATPC 40.12 or 40.28 if  
12 the department has reasonable grounds to conclude that the supplementary review is  
13 needed to determine compliance with this chapter. The department may require the  
14 applicant to submit information under this section that may be relevant to the  
15 supplementary review. The department may deny a permit application if the applicant  
16 fails to provide the information.

17           **NOTE:** The department may request assistance from the university of Wisconsin,  
18 college of agriculture and life sciences in evaluating any substantiating  
19 evidence under this section.  
20

21           (b) In its supplementary review, the department may consider any information  
22 that the department considers relevant, including information provided by the applicant.  
23 The department may consider whether the information is accurate, relevant, material,  
24 reliable, properly documented, substantiated, scientifically valid, persuasive, consistent

1 with generally accepted scientific knowledge, consistent with other reliable information,  
2 applicable under Wisconsin conditions, and applicable in light of recommended uses, use  
3 rates and use directions.

4       **(3) REVIEW PERIOD.** The department shall complete a supplementary review  
5 under sub. (1) as soon as reasonably possible, and within 120 working days after the  
6 department receives all of the supplementary information requested under sub. (1)(a).

7       **(4) ACTION FOLLOWING SUPPLEMENTARY REVIEW.** When the department  
8 completes its supplementary review, the department shall do one of the following:

9       (a) Issue the permit. The department may limit the time period for which the  
10 permit is effective, or impose other permit conditions that it deems necessary. If the  
11 department imposes permit conditions, the department shall give the applicant written  
12 notice of its reasons.

13       (b) Deny the permit. If the department denies the permit, the department shall  
14 give the applicant written notice of its reasons.

15       **ATCP 40.48 Scientific substantiation.** Test data and reports submitted in  
16 support of a permit application are not considered scientific unless all of the following  
17 apply:

18       **(1)** The test data and reports result from tests conducted by competent scientific  
19 researchers, using appropriate scientific methods.

20       **(2)** Test data and reports include all information needed to replicate the tests.

21       **(3)** Field test data and reports, if any, result from field tests that comply with the  
22 standards in *Appendix D*.

(4) Field test reports, if any, comply with the standards in *Appendix E*.

**ATCP 40.50 Withdrawing or modifying a permit application.** A permit

applicant may withdraw or modify an application at any time. An applicant may modify product contents or labeling to resolve issues presented in the permit review process. The department may, in its discretion, advise on label revisions at any point in the permit review process. Within 60 working days after the department receives a modified application that is complete, the department shall take action as provided in s. ATPC 40.44.

**ATCP 40.52 Permit reconsideration.** The department may, at any time,

reconsider the issuance of any permit under s. ATP 40.12 or 40.28. The department may require a permit holder to submit relevant information as for a supplementary review under s. ATP 40.46.

## SUBCHAPTER V PROHIBITIONS

**ATCP 40.54 Prohibitions. (1) APPLICATIONS AND REPORTS.** No person may do

any of the following in connection with a license or permit application under this chapter,

or in connection with any report or statement filed with the department under this chapter:

(a) Misrepresent or falsify any information.

(b) Make any statement that is not substantiated, to the extent required under this

chapter, at the time the statement is made.

**(2) ADVERTISING AND PROMOTIONAL STATEMENTS.** No person may do any of the

following in connection with the labeling, advertising, promotion or distribution of any

fertilizer or soil or plant additive:

- 1 (a) Make any representation that is false, deceptive or misleading.
- 2 **NOTE:** See also s. 100.18, Stats. A federally trademarked product name is not  
3 considered false, deceptive or misleading under par. (a).  
4
- 5 (b) Make any representation that is inconsistent with the product label.
- 6 (c) Represent that a product contains a plant nutrient or other beneficial  
7 substance, unless the guaranteed analysis includes a guarantee for that substance.
- 8 (d) Make any representation or warranty that is not substantiated, to the extent  
9 required under this chapter, at the time the representation or warranty is made.
- 10 (e) Represent that the department endorses or warrants the product.
- 11 (f) Make any performance, use or efficacy claim for a product, distributed  
12 pursuant to a permit under s. ATP 40.12 or 40.28, that exceeds or is inconsistent with  
13 the product label contained in the approved permit application. This does not apply to a  
14 performance, use or efficacy claim that the department approves in writing.
- 15 (g) Distribute a fertilizer, pursuant to the exemption in s. ATP 40.12(2)(a), to a  
16 person in this state who is not licensed under s. ATP 40.04.

17 **SUBCHAPTER VI**  
18 **ENFORCEMENT AND APPEALS**  
19

20 **ATP 40.56 License or permit action.** (1) The department may, for cause,  
21 deny, suspend, revoke, or impose conditions on a license or permit issued under this  
22 chapter. Cause includes any of the following:

- 23 (a) Failure to comply with s. 94.64 or 94.65, Stats., or this chapter.
- 24 (b) Failure to provide information required under s. 94.64 or 94.65, Stats., or this  
25 chapter.



1 (c) Failure to comply with the terms and conditions of a license or permit issued  
2 under this chapter. This may include violations resulting from material changes in  
3 product contents, product labeling, or product advertising or promotional claims.

4 (d) In the case of a permit issued under s. ATCP 40.12 or 40.28, the permit holder  
5 no longer holds a license under s. ATCP 40.04 or 40.28 that is required for the validity of  
6 the permit.

7 (e) In the case of a permit issued under s. ATCP 40.12 or 40.28, the permit holder  
8 has not distributed any product pursuant to the permit for at least 12 months.

9 **NOTE:** Sections 93.06(7) and (8), Stats., authorize the department to deny,  
10 suspend, revoke or impose conditions on licenses or permits.  
11

12 **(2) SUMMARY PERMIT SUSPENSION.** (a) The department's division of agricultural  
13 resource management may, by written notice, summarily suspend or impose conditions on  
14 a permit issued under s. ATCP 40.12 or 40.28, for any of the reasons identified in sub.  
15 (1).

16 (b) A summary suspension under par. (a) shall take effect on a date specified in  
17 the suspension notice, but not sooner than 10 days after the suspension notice is served on  
18 the permit holder. The division administrator shall sign the suspension order.

19 (c) A permit holder may request a hearing on a summary suspension under this  
20 subsection, pursuant to s. ATCP 1.03. The administrative law judge or final decision  
21 maker may stay the summary suspension pending hearing or decision, but a request for  
22 hearing does not automatically stay a summary suspension.

23 **ATCP 40.58 Stop sale and holding orders. (1) STOP SALE ORDER.** The  
24 department may issue a written order prohibiting the distribution or movement of a

1 product if the department finds that the product is distributed in violation of s. 94.64 or  
2 94.65, Stats., or this chapter. No person may distribute or move a product in violation of  
3 the department's order.

4 **NOTE:** See ss. 94.64(11)(a) and (b) and s. 94.65(10)(b), Stats.

5 **(2) TEMPORARY HOLDING ORDER.** (a) The department may issue a written  
6 holding order, temporarily prohibiting the distribution or movement of a product, if the  
7 department has reason to believe that the product is distributed in violation of s. 94.64 or  
8 94.65, Stats., or this chapter. The department may issue a temporary holding order  
9 pending further examination or analysis to determine whether there is a violation of s.  
10 94.64 or 94.65, Stats., or this chapter. No person may distribute or move a product in  
11 violation of a temporary holding order.

12 **NOTE:** See ss. 94.64(11)(b) and 94.65(10)(a), Stats.

13 (b) A temporary holding order on a fertilizer remains in effect for 15 days unless  
14 the department extends or withdraws the order. The department may extend the  
15 temporary holding order for up to 15 days to complete sampling, analysis and evaluation  
16 of the fertilizer and its labeling.

17 (c) A temporary holding order on a soil or plant additive or a fertilizer-additive  
18 combination remains in effect for 60 days unless the department withdraws the order.

19 **(3) SERVING AN ORDER.** The department shall serve an order under sub. (1) or (2)  
20 by delivering or mailing a copy to the owner or custodian of the product, or by posting a  
21 copy in a conspicuous place on or near the product.

22 **(4) RELEASING AN ORDER.** The department may release an order if any of the

1 following apply:

2 (a) The department finds that the violation has been corrected.

3 (b) The department determines, upon further investigation, that there is no  
4 violation.

5 (c) The department determines that the order is not necessary or appropriate, or is  
6 no longer necessary or appropriate.

7 **ATCP 40.60 Court enforcement.** The department may seek court action to  
8 enforce this chapter, including any of the following actions that may be appropriate:

9 (1) FERTILIZER SEIZURE. The department, or a district attorney at the request of  
10 the department, may ask a court to seize and dispose of a fertilizer as provided in s.  
11 94.64(11)(c), Stats.

12 (2) INJUNCTION AND RESTITUTION. The department, or a district attorney at the  
13 request of the department, may ask a court to issue a temporary or permanent injunction  
14 under s. 94.64(11)(d) or 94.65(10)(d), Stats., to restrain a violation of this chapter. The  
15 department may also ask a court to order restitution.

16 (3) CIVIL FORFEITURE. The department may ask a district attorney to seek a court-  
17 ordered civil forfeiture under s. 94.64(12)(a) or 94.65(11)(a), Stats.

18 (4) CRIMINAL PROSECUTION. The department may ask a district attorney to  
19 initiate a criminal prosecution under s. 94.64(12)(a) or 94.65(11)(b), Stats.

20 **NOTE:** A buyer injured by a violation of this chapter may sue the violator for any  
21 contract remedies that may apply. If the violation pertains to a soil or  
22 plant additive, the person may also sue for double damages, costs and  
23 reasonable attorney fees under s. 94.65(12), Stats.

24  
25 **ATCP 40.62 Administrative appeals. (1) REQUEST FOR HEARING.** A person

1 who is the subject of any of the following department actions may request a hearing and  
2 reconsideration of that action:

3 (a) The denial or restriction of a permit or initial license under this chapter.

4 (b) A stop sale order or holding order under s. ATCP 40.58.

5 **NOTE:** See also s. ATCP 40.56(2)(c).

6 **(2) REQUEST FORM AND CONTENTS.** A request under sub. (1) shall be in writing,  
7 and shall include all of the following:

8 (a) A copy of the notice or order under sub. (1) that the requester asks the  
9 department to reconsider.

10 (b) The requester's objections to the department's action, including disputed facts  
11 and conclusions.

12 (c) The harm allegedly caused to the requester by the department's action.

13 (d) Identification of all the information that supports the requester's objections  
14 and alleged harm.

15 (e) The legal basis for the requester's objections.

16 (f) The requested remedy.

17 **(3) INFORMAL CONFERENCE.** (a) If the department receives a written request that  
18 complies with sub. (2), the administrator of the department's agricultural resource  
19 management division shall schedule an informal conference with the requester. The  
20 administrator or the administrator's designee shall initiate the conference within 10  
21 working days after the department receives the request unless the requester agrees to a  
22 later date.

1 (b) Following completion of the informal conference, the administrator or  
2 designee shall decide whether to affirm, reverse or modify the disputed action. The  
3 administrator or designee shall issue a written decision and provide a copy to the  
4 requester. The administrator or designee shall issue the decision as soon as reasonably  
5 possible, but not more than 30 working days after completion of the informal conference.

6 (4) FORMAL HEARING. (a) If an issue is not resolved by the informal conference  
7 under sub. (3), an adversely affected party may request a contested case hearing on the  
8 unresolved issue, pursuant to ch. 227, Stats., and ch. ATPC 1. Hearing requests shall  
9 comply with sub. (2).

10 (b) A hearing on the denial or restriction of a permit or initial license shall be  
11 conducted as a class 1 contested case under ch. 227, Stats. A hearing on the suspension,  
12 revocation or restriction of an issued license or permit shall be conducted as a class 2  
13 contested case under ch. 227, Stats.

14 **EFFECTIVE DATE.** This rule takes effect on the first day of the month following  
15 publication in the Wisconsin administrative register, as provided under s.  
16 227.22(2)(intro.).

17  
18 Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2005

19 STATE OF WISCONSIN  
20 DEPARTMENT OF AGRICULTURE,  
21 TRADE AND CONSUMER PROTECTION  
22

23  
24 By \_\_\_\_\_  
25 Rodney J. Nilsestuen,  
26 Secretary

## APPENDIX A

### FERTILIZER-ADDITIVE LABEL FORMAT

The guaranteed analysis for a fertilizer-additive combination must appear in the following format. Nutrients and enhancing elements identified in s. ATCP 40.10(2), if claimed, must meet minimum guarantees required in s. ATCP 40.10(2). Enhancing elements other than cobalt or sodium, if claimed, must be guaranteed as soil or plant additive ingredients.

#### GUARANTEED ANALYSIS

##### PLANT NUTRIENTS

Total Nitrogen (N) .....	_____ %
_____ % Ammoniacal Nitrogen	
_____ % Nitrate Nitrogen	
_____ % Water Insoluble Nitrogen	
_____ % (Other recognized and determinable forms of nitrogen)	
Available Phosphate (P <sub>2</sub> O <sub>5</sub> ) .....	_____ %
Soluble Potash (K <sub>2</sub> O) .....	_____ %
Calcium (Ca) .....	_____ %
Magnesium (Mg) .....	_____ %
Sulfur (S) .....	_____ %
Boron (B) .....	_____ %
Chlorine (Cl) .....	_____ %
Cobalt (Co) .....	_____ %
Copper (Cu) .....	_____ %
Iron (Fe) .....	_____ %
Manganese (Mn) .....	_____ %
Molybdenum (Mo).....	_____ %
Nickel (Ni).....	_____ %
Sodium (Na) .....	_____ %
Zinc (Zn) .....	_____ %

##### SOURCE OF PLANT NUTRIENTS:

(A listing of the sources of all elements listed above in a descending order of content by weight for each plant nutrient source)

##### SOIL ADDITIVE ACTIVE INGREDIENTS

or

##### PLANT ADDITIVE ACTIVE INGREDIENTS

or

##### SOIL OR PLANT ADDITIVE ACTIVE INGREDIENTS

Common Name (Chemical Name).....	_____ %
Common Name (Chemical Name) .....	_____ %

##### INERT INGREDIENTS

Common Name (Chemical Name).....	_____ %
Common Name (Chemical Name).....	_____ %

## **APPENDIX B**

### **HUMIC SUBSTANCE EXTRACTION TEST**

The analytical method for determining the percentage content of a humic substance in a product shall follow a colorimetric test of a 0.5N NaOH extraction from the formulated product. The methodology is as follows:

#### **Scope**

This method may be used for solid and liquid samples containing 0.5% or more humic acid. The humic acids are dissolved by treatment with 1N sodium hydroxide and then precipitated with hydrochloric acid.

#### **Equipment and Reagents**

1. Centrifuge
2. 100 mL Screw Cap Centrifuge Bottles
3. 1 N NaOH
4. 1% NaOH (10 g/liter)
5. Conc. HCl
6. 100°C Drying Oven
7. Mechanical Shaker

#### **Analysis**

1. Weigh appropriate size sample into a 100 mL wide mouth screw top bottle to give close to 0.2 gms of dry humic acid ppt.
2. Add 50 mLs 1 N NaOH, seal tightly.
3. Shake on mechanical shaker for 1.5 hours for solids, 30 minutes for liquids.
4. Rinse the cap with 5 mLs 1% NaOH.
5. Centrifuge for 25 minutes at 2000 rpm.
6. Decant supernatant liquid into a second weighed bottle.
7. Add 10 mLs 1% NaOH to first bottle, shake vigorously, centrifuge again.
8. Add the supernatant liquid to the second centrifuge bottle.
9. To the combined extracts in the second bottle, add conc. HCl until the pH is adjusted to between 1 and 2.
10. Centrifuge the sample for 25 minutes at 2000 rpm.
11. Carefully decant the liquid and discard.
12. Add 25 mLs distilled water (previously adjusted to pH 1-2 with HCl) to the bottle with ppt., shake vigorously to free all ppt. from bottom and centrifuge again.
13. Again, carefully decant the liquid and discard.
14. Repeat steps 12 and 13 two more times.

15. Dry the bottle with humic acid overnight at 100° - 110° C.
16. Cool in dessicator and weigh.

### **Calculations**

$$\% \text{ Humic Acid} = \frac{\text{Weight dried residue} \times 100}{\text{Sample weight}}$$

### **References**

John Husler, University of New Mexico, Department of Geology, Albuquerque, New Mexico

C.A. Black, Methods of Soil Analysis Part 2, American Society of Agronomy, Inc., Madison, Wisconsin, 1965.



## **APPENDIX C**

### **NON-NUTRIENT METALS; PROHIBITED CONCENTRATIONS**

#### **Products Derived from Organic Sources**

*If a soil or plant additive is derived from materials that are at least 80% organic matter on a dry weight basis, the concentration of arsenic, cadmium, lead, mercury, nickel or selenium in that product may not exceed the maximum concentration specified for that metal in 40 CFR 503.*

#### **Soil or Plant Additive Less than 80% Organic**

*If a soil or plant additive is derived from materials that are less than 80% organic matter on a dry weight basis, the product may not contain any metal shown in Table C-1 in a concentration that exceeds the maximum concentration shown in Table C-1:*

**Table C-1**  
**METAL CONTAMINATION LIMITS FOR SOIL OR PLANT ADDITIVES**  
**DERIVED FROM SOURCE LESS THAN 80% ORGANIC**

<b>Metal</b>	<b>Maximum Concentration (in ppm) for Product Applied at Less than 250 Lbs. per Acre per Year</b>	<b>Maximum Concentration (in ppm) for Product Applied at 250 Lbs. per Acre per Year, or More</b>
<b>Arsenic</b>	<b>1,300 ppm.</b>	<b>325,000 divided by maximum annual application rate (lbs./acre)</b>
<b>Cadmium</b>	<b>1,000 ppm.</b>	<b>250,000 divided by maximum annual application rate (lbs./acre)</b>
<b>Lead</b>	<b>6,100 ppm.</b>	<b>1,525,000 divided by maximum annual application rate (lbs./acre)</b>
<b>Mercury</b>	<b>100 ppm.</b>	<b>25,000 divided by maximum annual application rate (lbs./acre)</b>
<b>Nickel</b>	<b>25,000 ppm.</b>	<b>6,250,000 divided by maximum annual application rate (lbs./acre)</b>
<b>Selenium</b>	<b>2,600 ppm.</b>	<b>650,000 divided by maximum annual application rate (lbs./acre)</b>

## **APPENDIX D**

### **FIELD TEST STANDARDS**

A field test shall meet the following standards:

(1) Testing shall be done over at least 2 growing seasons, or in at least 2 geographically separated locations over at least one growing season. Testing on agricultural crops shall continue through normal Wisconsin harvest time for those crops and include appropriate yield and quality data for that crop.

(2) Testing shall be done under Wisconsin conditions, or under conditions that are relevant to Wisconsin product users. For plants typically grown indoors, or in greenhouses or outdoor pots, tests may be conducted under greenhouse conditions that resemble the plants' normal growing conditions.

(3) Testing shall include all of the following:

(a) An untreated control area or control sample. The control area or control sample shall be identical, in relevant respects, to treated areas or samples.

(b) An area or sample treated with the test product, at the product label rate.

(c) An area or sample treated with a comparable product, if any, that is permitted in Wisconsin. The product shall be applied at the rate specified on the label of that product.

(d) If the test product is a fertilizer or fertilizer-additive, an area or sample treated with a fertilizer permitted in Wisconsin. The fertilizer shall supply the same nutrients supplied by the test product, and be applied at a rate consistent with relevant and published recommendations of the university of Wisconsin.

(4) Test areas or test samples under paragraph (3) shall be randomly distributed among test plots, to achieve a statistically valid plot design. Plot treatments shall be replicated at least 4 times. Plots shall be large enough to avoid overlapping treatment effects.

(5) Testing on agricultural crops shall include accurate measurement of crop yield and quality. The measurement of crop yield and quality shall be based upon the parameters that establish the market value for the crop being tested.

## APPENDIX E

### FIELD TEST REPORT STANDARDS

A field test report shall follow principles of scientific investigation. Methods, statistics and interpretations shall be capable of withstanding peer review in the scientific communities of agronomy, horticulture or soil science. The report shall be peer reviewed, or prepared to peer review standards. The report shall contain all the following:

- (1) A descriptive title.
- (2) An introduction that clearly describes all the following:
  - (a) The product being tested, including a statement of ingredients and ingredient amounts.
  - (b) The crop, plant or nutrient response being measured.
  - (c) The funding source for the research, and the researcher's financial interest in the product, if any.
  - (d) The research location and facility.
  - (e) The identity and background of the researcher, including any bias the researcher has toward the product being tested.
- (3) A clear statement of the hypothesis or product claim being tested.
- (4) A statement of methods and materials. This statement shall explain how the test was scientifically designed to prove or disprove the hypothesis or product claim. It shall describe, in detail, the test design, setting, methods, conditions, dates and locations. The description shall be sufficiently clear and detailed so that another researcher can replicate the test based solely on the report. If the test was not done in Wisconsin or under Wisconsin growing conditions, the statement shall identify significant differences in the growing conditions.
- (5) A statement and discussion of test results. This shall include all the following:
  - (a) A clear and detailed statement of the test results, including a statistical report and analysis of the test results at the 1% or 5% level of statistical significance.

**NOTE:** The department may consider test results reported at the 10% level of statistical significance only to the extent that those results are supported consistently through many years of research or in numerous locations.

- (b) A conclusion based on the stated test results. The conclusion shall indicate whether the test did or did not prove the hypothesis or product claim. If the test was not conducted under Wisconsin conditions, the conclusion shall discuss the validity and relevance of the test under Wisconsin conditions.